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SUPREME COURT

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 373

CHARLES PAUL, Director of Agriculture of the State of California and STANLEY MOSK, Attorney General, State of California,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, BEFORE JUDGMENT

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IN THE

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OCTOBER TERM, 1962

No. ---

CHARLES PAUL, Director of Agriculture of the State of California and STANLEY MOSK, Attorney General, State of California,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, BEFORE JUDGMENT

Petitioners pray that a writ of certiorari be issued to the United States Court of Appeals for the Ninth Circuit before the rendition of judgment in said court, for the review of a cause docketed in the said Court of Appeals, No. 17428, there pending on appeal from the final judgments of a specially convened three-judge district court for the Northern District of California, Southern Division.

CITATIONS TO OPINIONS BELOW

The opinion of the District Court for the Northern District of California, Southern Division, is reported in 190 F. Supp. 645. Copies of the opinion, order regarding findings, judgments, and the notices of appeal to the Court of Appeals, are set forth in the appendix.

JURISDICTION

These actions were brought under 28 U.S.C. 1331 and 1345 to enjoin the enforcement of the California milk stabilization act (Calif. Agr. Code, Ch. 17, Div. 6) as an unconstitutional interference with a federal procurement function exercised under the federal procurement statutes (10 U.S.C. 2301 et seq.) and as unconstitutional as applied to contractors making delivery of milk to areas subject to claimed exclusive federal jurisdiction. R. 7-13, 178-183, 191-196, Printed Record, *Paul* v. *United States*, Oct. Term, 1962, No. 19. The trial court granted the relief requested and permanent injunctions of the specially convened three-judge district court were entered on April 19, 1961. R. 6, 166. Notices of appeal to the United States Court of Appeals for the Ninth Judicial Circuit were timely filed in the District Court on May 11, 1961 and docketed in the Court of Appeals as No. 17428 on June 20, 1961. 28 U.S.C. 1291, 2107. R. 7, 167.

Petitioners have also filed direct appeals to this Court from the district court under 28 U.S.C. 1253. *Paul* v. *United States*, Supreme Court of the United

States, Oct. Term, 1962, No. 19; R. 6, 166. By order entered January 15, 1962, the Court postponed consideration of the question of appellate jurisdiction until the hearing of the cause on the merits. 368 U.S. 965.

Appellate jurisdiction of the Court in No. 19 under 28 U.S.C. 1253 hinges on whether the appellees' complaints required the convening of a three-judge district court under 28 U.S.C. 2281. *Florida Lime Growers* v. *Jacobsen*, 362 U.S. 73, 75 (1960). A district court of three judges is to be convened under 28 U.S.C. 2281 only if an injunction is sought restraining the enforcement of a state statute "upon the ground of the unconstitutionality of such statute." If this Court lacks direct appellate jurisdiction of these cases under 28 U.S.C. 1253, then the appeals necessarily lie to the Court of Appeals under 28 U.S.C. 1291, and a Petition for Writ of Certiorari lies to the Court of Appeals before judgment in that court under 28 U.S.C. 1254(1). *Stainback* v. *Mo Hock Ke Lok Po*, 336 U.S. 368, 381 (1949). *Turner* v. *Memphis*, 369 U.S. 350 (1962).

Respondents' complaints in the district court alleged that the state milk stabilization act as applied to contractors delivering milk to three military installations[1] was unconstitutional as imposing an unreasonable burden on and impediment to the United States in the discharge of its procurement functions

[1] Castle Air Force Base, Merced, California (Castle), Travis Air Force Base, Fairfield, California (Travis), and Oakland Army Terminal, Oakland, California (Oakland).

exercised under the procurement statutes. 10 U.S.C. 2301 et seq. R. 8, 178, 191. Petitioners as appellants in No. 19 contend that these allegations tendered a constitutional issue under 28 U.S.C. 2281, and that this Court has appellate jurisdiction under 28 U.S.C. 1253. *Query* v. *United States*, 316 U.S. 486, 487 (1942); *Calif. Comm'n.* v. *United States*, 355 U.S. 534 (1958).

These complaints of respondents in the court below also alleged that California could not constitutionally regulate prices to the United States where the sales and deliveries are made on an area alleged by respondents to be subject to the exclusive jurisdiction of the United States. R. 8, 178, 191. Petitioners as appellants in No. 19 assert that these allegations pose the issue of the unconstitutionality of the state statute as applied to a ". . . transaction carried on under sovereignty conferred by Article I, Section 8, Clause 17 of the Constitution . . . ." *Pacific Coast Dairy* v. *Dept.*, 318 U.S. 285, 295 (1943).

However, the Court may disagree with these contentions and may find that only the court of appeals has jurisdiction of the appeals under 28 U.S.C. 1253. Petitioners in such case respectfully invoke the jurisdiction of the Court to review these judgments by Writ of Certiorari to the court of appeals under 28 U.S.C. 1254(1). *Stainback* v. *Mo Hock Ke Lok Po*, 336 U.S. 368, 370-371 (1949); *Turner* v. *Memphis*, 369 U.S. 350 (1962).

QUESTIONS PRESENTED

The questions presented are the same as set forth by these petitioners as appellants in their Brief for Appellants filed in this Court in *Paul* v. *United States*, October Term, 1962, No. 19. These questions are:

1. Delivery of fresh milk is made to three military installations in California principally for resale through commissaries, post exchanges, officers' and noncommissioned officers' clubs (70 percent) and partially for troop ration (30 percent). Does the enforcement of the California milk stabilization act against producers and distributors, with respect to milk purchased by distributors from milk producers and then delivered by such distributors to the three military installations, constitute an unconstitutional interference with the performance of a governmental procurement function exercised under the federal procurement statutes, 10 U.S.C. 2301 et seq?

2. California by statute in 1872 consented to the purchase or condemnation of land by the United States for military purposes and in 1897 tendered "to the United States exclusive jurisdiction over all lands . . . now held, occupied, or reserved by the Government of the United States for military purposes or defense, or which may thereafter be ceded or conveyed to said United States for such purposes; provided, that a sufficient description by metes and bounds and a map or plat of such lands be filed in the proper office of record in the county in which the lands are situated." Sec. 34, Pol. Code; Stats. 1897, Ch. 56, p. 51

[Calif. Gov. Code, Secs. 111, 114]. Did the United States obtain exclusive jurisdiction over the parcels at Travis Air Force Base and over a civilian housing tract at Castle Air Force Base where the United States failed to file metes and bounds descriptions and plats for the parcels at Travis and Castle in the appropriate county recording office?

3. The United States Secretary of the Army gave written notice that the Department of the Army "hereby assents to the acceptance of federal jurisdiction" over certain parcels at the Oakland Army Terminal "upon and subject to each and all of the conditions and reservations prescribed in said California Government Code section 126 . . . ." At the time of such notice, Section 126 Government Code, reserved various state powers "in addition to any other conditions or reservations prescribed by law." At the time of such notice, Section 113, Government Code, reserved "the administration of the criminal law of the state with respect to any land over which any jurisdiction . . . may be ceded or conveyed to the United States . . . ." Did California make a cession of exclusive jurisdiction over these parcels at Oakland to the United States?

4. Did the district court err in permanently enjoining enforcement of the California milk stabilization act as unconstitutional without trial and on motions for preliminary injunction (Action No. 39030) and for summary judgment (Action No. 39073), where the pleadings and affidavits raised issues of material facts?

5. Did the district court err in failing to abstain from final decision pending construction by the California Supreme Court of the California milk stabilization act and the California statutes relating to the acquisition of land and jurisdiction by the United States, and in enjoining appellants from proceeding in pending state court actions?

STATUTES INVOLVED

Constitution and Federal Statutes:

Constitution, Article I, Section 8, Clause 17; 10 U.S.C. 2301-2314; Lanham Act, 54 Stat. 1125; Section 355 Revised Statutes, as amended, Act of October 9, 1940, 54 Stat. 1083.

California Statutes:

California milk stabilization act, Chapter 17, Division 6, Agricultural Code; Section 34, 1872 Political Code, as amended by Statutes of 1939, Chapter 710, page 2231 (Sec. 111, Gov. C); Statutes of 1897, Chapter 56, page 51 (Sec. 114, Gov. C); Section 113, Government Code, as amended Statutes 1947, Chapter 1532, page 3164; Section 126, Government Code, as amended, Statutes 1947, Chapter 1532, page 3163.

Copies of these statutes are set forth in the appendix hereto.

STATEMENT

To guard against frustration of appellate review in the event that this Court lacked appellate jurisdiction of their appeal, appellants in cause No. 19 this term likewise perfected their appeals to the United States Court of Appeals for the Ninth Circuit. *Philips* v.

United States, 312 U.S. 246, 251 (1941). This petition is filed to request that, should this Court not have appellate jurisdiction on the direct appeal in cause No. 19 this term, the cause be brought before this Court by the issuance of a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, before rendition of judgment in the Court of Appeals. The appeals necessarily lie in the Court of Appeals under 28 U.S.C. 1291, if they do not lie in this Court under 28 U.S.C. 1253. *Stainback* v. *Mo Hock Ke Lok Po*, 336 U.S. 368, 381 (1949).

The transcript of the record of the cause docketed in the United States Court of Appeals for the Ninth Circuit as No. 17428, duly certified and filed in support of this petition, is identical (save for the notices of appeal to the Court of Appeals) with the record filed in connection with the direct appeal to this Court, in said cause No. 19.

The opinion below, questions presented and statutes involved, are the same in both this petition and in the Brief for Appellants filed concurrently herewith in said cause No. 19 in this court. Petitioners respectfully adopt as their brief in the event the Writ of Certiorari prayed for should be granted, the Brief for Appellants filed in said cause No. 19, and request this Court to consider this petition in conjunction with the direct appeal to this Court.

REASONS FOR GRANTING THE WRIT

The United States government purchases approximately 29 million gallons of fresh milk each year for resale and for consumption on the 635 federal installations in California. R. 348, 392. Of this number, 242 are military installations. R. 392. In early 1960 the California Director of Agriculture filed several actions

in the state courts against California milk distributors, charging some with purchasing milk from milk producers at prices below the state established minimum prices, and some with selling milk at below the established minimum wholesale prices. The ultimate delivery of the processed milk in most instances was to federal military installations. R. 745-794.

The government then brought the present actions in the United States District Court for the Northern District of California, Southern Division, to restrain the Director of Agriculture and the Attorney General from proceeding in the state lawsuits where the ultimate delivery of the processed milk was made to the Castle Air Force Base and to the Oakland Army Terminal,[2] and to restrain enforcement of the state law where deliveries of milk were made to the Travis Air Force Base. R. 8, 178, 191. A specially convened three-judge district court issued the requested injunction on two grounds: (1) That the California milk stabilization act, as applied to producers and their distributors delivering milk to the three described military bases, unconstitutionally interfered with a federal procurement function exercised under the procurement statute, 10 U.S.C. 2301 et seq., and (2) that the state enactment as applied was unconstitutional under Constitution Article I, Section 8, clause 17, because delivery of the fluid milk occurred on areas held by the district court to be within exclusive federal rather than state jurisdiction. R. 558-582.

The California milk stabilization act, Calif. Agr. C., Div. 6, Ch. 17, was first enacted in 1935 to protect

[2] *Warne* v. *Milk Producers Association*, District Court of Appeal of California, Third Appellate District, No. 10185, R. 656; *Warne* v. *Milk Producers Association*, Alameda County Superior Court of California, No. 304750, R. 150.

the consumer from monopolistic milk pricing, to lower the wholesale and retail prices for milk by eliminating destructive and unfair economic distribution practices, and to insure milk producers the necessary costs of production. Calif. Agr. C. Sec. 4201-4205; *In re Willing*, 12 C. 2d 591, 594 (1939); see *Nebbia* v. *New York*, 291 U.S. 502, 515-518 (1934). Twenty-three states have enacted milk stabilization statutes similar to California's.[3] The authority of those states to protect the consuming public, the milk producer, and the distributor from destructive effects of price wars carried on between distributors competing for contracts with federal military installations hinges upon a determination of the validity of the California enactment. It is noted that the appellant state officers in this case have been enjoined from enforcing the milk stabilization act for over two years since the granting of the *ex parte* restraining order by the trial court on March 30, 1960. R. 454.[4]

This case also involves the applicability, and construction of Article I, Section 8, clause 17, of the Federal Constitution, and of the California consent and cession statutes. Construction of this clause in the Constitution, and of these statutes will also largely determine the jurisdictional status of the 242 military installations on four million acres of land in California. R. 392. The construction given by the court to Article I, Section 8, clause 17, of the Constitution will directly effect the 48 states within whose borders lie

[3] Cifations to these state milk stabilization statutes are set out in the Brief for Appellants in No. 19, this term, at pp. 232-233.

[4] This injunction was partially stayed on July 3, 1962, by a Justice of this Court, with respect to the enforcement of minimum milk producer price regulations. The district court injunction restraining enforcement of the state minimum wholesale milk price regulations continued in force.

5,050 federal installations claimed by the United States to be within exclusive federal jurisdiction.[5] These issues, because of their importance, require immediate and plenary determination.

The posture of the case is sufficiently similar to *Stainback* v. *Mo Hock Ke Lok Po*, 336 U.S. 368 (1949) to warrant this Court in exercising its jurisdiction to grant certiorari. In the *Stainback* case a three-judge federal district court in Hawaii convened under Judicial Code Section 266, 36 Stat. 1162 [predecessor to 28 U.S.C. 2281], granted a permanent injunction against enforcement of a Hawaiian statute regulating the teaching of foreign languages to children on the ground that the statute violated the due process clause of the Fifth Amendment. Pursuant to Judicial Code Section 266, the Hawaiian state officers took a direct appeal to this Court. To guard against frustration of review in the event that the cause did not lie within the appellate jurisdiction of this Court, an appeal had also been perfected to the United States Court of Appeals for the Ninth Circuit.

Having doubts as to whether Judicial Code Section 266 applied to the Territory of Hawaii, this Court postponed consideration of the question of jurisdiction to the hearing of the case on the merits. 336 U.S. 368, 371. Because of the public interest in the effect of the case on the thousands of school children in Hawaii, and because the cause was before the Court on the merits, the Hawaiian state officers filed a petition for writ of certiorari to the court of appeals before judgment. Both the appeal and the petition for certiorari were considered at the same time. The

[5] Inventory Report on Jurisdictional Status of Federal Areas Within the States, General Services Administration, 1949, page 3.

Court held that jurisdiction of the appeal was lacking but granted the petition for the writ of certiorari "to avoid further futile proceedings." 336 U.S. 368, 371.

In *Turner* v. *Memphis*, 369 U.S. 350 (1962), the appellants had filed appeals from a three-judge district court both to this Court and to the court of appeals. Consideration of the question of the Court's appellate jurisdiction was postponed to the hearing on the merits. 368 U.S. 808. Having determined the merits of the appeal by ruling that the trial court erred in abstaining from exercising its jurisdiction, the Court on its own motion granted a writ of certiorari to the court of appeals in order that "the litigation should be disposed of as expeditiously as is consistent with proper judicial administration." 369 U.S. 350, 353.

The instant case is strikingly similar. Here, because appellants strongly believe that the three-judge district court was properly convened, petitioners, as appellants in No. 19, filed their direct appeals pursuant to 28 U.S.C. 1253. The Court has indicated that the questions presented in cause No. 19 have sufficient solidity to order argument thereon, just as it ordered argument in the *Stainback* and *Turner* appeals, 368 U.S. 965; 369 U.S. 350. And as it granted writs of certiorari in the *Stainback* and *Turner* cases, it should do so here if jurisdiction of the direct appeal is found lacking where the questions have comparable importance which require expeditious decision on the merits.

The briefs amici, filed in support of petitioner's Jurisdictional Statement in cause No. 19 by the States of Montana, Maine, Nevada, Virginia and Mississippi, and by the Dairy Institute of California, Consolidated Milk Producers of San Francisco, Inc.

and Petaluma Cooperative Creamery, attest to the concern of many in the issues of this case.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted and the judgments below reversed should the court find that it has no jurisdiction of the direct appeal in No. 19. Petitioners pray that the Court defer acting upon this petition until after oral argument is heard in *Paul v. United States*, October Term, 1962, No. 19, when jurisdiction on appeal and on certiorari can be considered at the same time.

Respectfully submitted,

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APPENDIX

I. MEMORANDUM OPINION OF THE DISTRICT COURT DATED NOVEMBER 29, 1960.

[Title of Court Omitted]

UNITED STATES OF AMERICA, *Plaintiff,* vs. WILLIAM E. WARNE, Director of Agriculture of the State of California, and STANLEY MOSK, Attorney General, State of California, *Defendants.*	Nos. 39030 39073 Memorandum Opinion

Before: JERTBERG, Circuit Judge, and HARRIS and SWEIGERT, District Judges
SWEIGERT, District Judge

I. BACKGROUND OF THE CASE

The above two actions have been brought by the United States to determine the applicability of the California Milk Stabilization Law (Cal. Agricultural Code, Div. 6, Ch. 17, Secs. 4200 to 4420) to purchases made by the United States, through U.S. Army and Air Force procurement officers, of milk and milk products from local producers and distributors for on-base mess hall consumption and on-base commissary sales at three federal military installations located within the territorial limits of California.

Civil Action No. 39030, involving the Oakland Army Terminal, is before this Court on plaintiff's motion for a preliminary injunction. Civil Action No. 39073, involving Travis Air Force Base (Count I), and Castle Air Force Base (Count II), is before the Court on plaintiff's motion for summary judgment. Because these actions test the constitutionality of the State milk law as applied to the federal government, the

present three judge court was assembled, pursuant to 28 U.S.C. Sections 2282 and 2284.

Two additional actions, Civil Action No. 39052, involving Camp Pendleton, and Civil Action No. 39059, involving Mather Air Force Base, are on file awaiting determination of these actions.

II. CALIFORNIA MILK STABILIZATION ACT

Briefly, the California Milk Stabilization Act was passed in 1935 to regulate the marketing and distribution of fluid milk and fluid cream. Cal. Agricultural Code Section 4201 declares that such products are necessary articles of food, that the production and maintenance of an adequate supply of healthful milk is vital to the public health and welfare, and that the policy of the State is to promote, foster and encourage the intelligent production and orderly marketing of milk, and to eliminate unfair and destructive trade practices.

To achieve these ends, marketing areas throughout the State were established (Section 4204), to be administered by the Director of Agriculture (Section 4270), whose duty it is to establish minimum milk prices (Section 4246, 4247, 4281, 4352, 4353), and to license milk distributors within each marketing area (Sections 4244, 4375).

Under provisions of the Act, the Director is also empowered to revoke and suspend licenses for violation of any stabilization and marketing plan (Section 4415) to bring actions to enjoin such violations (Section 4256), and to prosecute actions to recover civil penalties of $500 for each violation (Section 4410).

The California Attorney General is also empowered to enforce the Act, under Article V, Section 21 of the

California Constitution, Section 12511 of the California Government Code, and Section 4410, supra, to bring prosecutions for criminal violations of the milk code.

III. PRELIMINARY MATTERS

The defendants, the California Director of Agriculture and the California Attorney General, have filed actions in various State courts, seeking injunctive relief and civil penalties against milk suppliers and distributors who have entered into procurement contract with federal officials at the several military bases, calling for the sale of milk at negotiated prices less than those established under the State Act. (Exhibits 8-11). Defendants have also instituted declaratory judgment actions in this Court against federal procurement officers at Travis Air Force Base, Civil Action, No. 39080, seeking a determination of their right to enforce the State law as to milk sales consummated at that base.

The United States contends that these State attempts to enforce the milk act have interfered with the purchase of milk and milk products by the United States at its military installations, over which it claims exclusive legislative jurisdiction, and are in conflict with federal competitive bidding policy and procedures, expressed in Armed Services Procurement Regulations, para. 1-301, 1-302.2, 3-101 and 3-108.1, and Army Procurement Procedure, para. 3-101.

The United States alleges that, being unable to obtain milk and milk products at less than the State minimum price, it has incurred additional operating costs of $15,000 per month on milk purchases at Travis Air Force Base (Rainey's Affidavit of March

8, 1960), $112,457 per year at Castle Air Force Base (Mann's Affidavit, Attachment H), and $10,000 per month at Oakland Army Terminal. (Complaint, para. 18).

It is the position of the United States that the State milk code may not constitutionally be applied to lands over which the United States has exclusive legislative jurisdiction; further that its enforcement violates the right of the plaintiff to be free from State interference in the exercise of a federal function, under the Supremacy Clause, Art. VI, Clause 2 of the United States Constitution. On these facts, we believe that a justiciable controversy exists. *Florida Lime & Avocado Growers, Inc.* v. *Jacobsen*, 362 U.S. 73 (1960), *California Public Utilities Commission* v. *United States*, 355 U.S. 534 (1958).

Preliminarily, the defendants urge that this Court should abstain from consideration of these cases on the merits, because of the existence of State questions which, if determined by the California State Courts, would render assistance to this Court in the formulation of its decision.

Although a determination of these cases upon the merits depends in part upon the legal effect of certain proceedings taken pursuant to State consent-to-purchase statutes and State cession statutes, the question whether the United States acquired exclusive legislative jurisdiction over the lands comprising the various military reservations under discussion is a federal question arising under Title 28 U.S.C. Sections 1331, 1345. *Silas Mason Co.* v. *Tax Commission*, 302 U.S. 186, 197 (1937).

In *Allegheny County* v. *Frank Mashuda Co.*, 360 U.S. 185 (1959), it was held that a federal district

court may not abstain from exercising its jurisdiction where there is no hazard of unnecessarily deciding a federal constitutional question, or of unsettling some delicate balance in the area of federal-state relationships, or of resolving difficult and uncertain issues of State law.

Such factors being absent, we are of the opinion that we should proceed to a consideration of the issues.

IV. THE ISSUES

In *Penn Dairies* v. *Milk Control Commission*, 318 U.S. 261 (1943), the Supreme Court held that the Pennsylvania Milk Control Commission should not be restrained from enforcing a similar milk act or from refusing to license a milk distributor who had sold milk to the United States at a military installation at prices less than the minimum fixed by the Pennsylvania act. In that case, however, the Court noted that the military installation was situated, not on land over which the United States had exclusive jurisdiction, but on land over which the State of Pennsylvania retained its jurisdiction.

In *Pacific Coast Dairy, Inc.* v. *Department of Agriculture*, 318 U.S. 285 (1943), decided the same day, the Court reached a different conclusion, holding that the California Department of Agriculture could not enforce the California milk code by revoking the license of a milk distributor for selling milk to the United States at a military reservation, Moffett Field, over which the United States exercised exclusive jurisdiction, at prices less than the minimum set by State law.

Recognizing that the results reached in the two cases might seem contradictory, the court noted,

318 U.S. at p. 295, that: "in preserving the balance between national and state power, seemingly inconsequential differences often require diverse results."

In the instant cases, defendants seek to avoid application of the *Pacific Coast Dairy* case to the three military installations here involved upon the ground that these installations are not in fact within the exclusive jurisdiction of the United States, and that, therefore, these cases are to be determined, not under *Pacific Coast Dairy*, but under the rule of *Penn Dairies*.

Defendants contend further, that even if these installations are within the exclusive jurisdiction of the United States, the penal provisions of the California Milk Act were assimilated as law within these federal enclaves under the so-called Assimilative Crimes Act, as amended in 1948, Title 18 U.S.C. Section 13.

Plaintiff contends: First, that the three installations here involved are in fact within the exclusive jurisdiction of the United States.

Secondly, that even if they are not, these cases should not be determined under the rule of the *Penn Dairies* case, supra, because the California Milk Act is in conflict with federal procurement regulations and policy within the rule of *Public Utilities Commission of California* v. *United States*, 355 U.S. 534 (1958), to which we shall refer in due course; and, therefore, that so far as the United States is concerned, the California Act violates the Supremacy Clause of the United States Constitution, Art. VI, Clause 2.

Further, and for this reason, plaintiff contends that the penal provisions of the California Act could not have been assimilated in these enclaves under the Assimilative Crimes Act.

V. THE ISSUE OF EXCLUSIVE JURISDICTION

A. Oakland Army Terminal

The United States alleges, and the record shows without contradiction, that the lands comprising the Oakland Army Terminal were acquired by the United States in 1950 through condemnation proceedings for the purposes set forth in Art. I, Sec. 8, Cl. 17 of the Constitution. (Plaintiff's Memorandum, filed March 30, 1960; and Exhibit 1.)

That Constitutional provision reads in pertinent part as follows:

> "The Congress shall have power . . . to exercise exclusive Legislation . . . over all Places purchased by the Consent of the Legislature of the State . . . for the Erection of Forts . . . and other needful Buildings."

At the time of the acquisition of Oakland Army Terminal in 1950, California Government Code Sec. 126 provided: "Notwithstanding any other provision of law, general or special, the Legislature of California consents to the acquisition by the United States of land within this State upon and subject to each and all of the following express conditions and reservations, in addition to any other conditions or reservations prescribed by law."

Then follow the various express conditions and reservations of the statute: "(a) The acquisition must be for the erection of forts . . . and other needful buildings, or other public purpose within the purview of Clause 17 of Section 8 of Article I of the Constitution of the United States;

(b) The acquisition must be pursuant to and in compliance with the laws of the United States;

(c) The United States must in writing have assented to acceptance of jurisdiction over the land upon and subject to each and all of the conditions and reservations in this section prescribed;

(d) The conditions prescribed in subdivisions (a), (b) and (c) of this section must have been found and declared to have occurred and to exist, by the State Lands Commission, and the Commission must have found and declared that such acquisition is in the interest of the State, certified copies of its orders or resolutions making such findings and declarations to be filed in the office of the Secretary of State, and recorded in the office of the County Recorder of each county in which any part of the land is situate;

(e) In granting this consent, the Legislature and the State reserve jurisdiction on and over the land for the execution of civil process and criminal process in all cases, and the State's entire power of taxation . . . and reserve to all persons residing on such land all civil and political rights, including the right of suffrage, which they might have were this consent not given . . . ."

The records of the California State Lands Commission, on file herein as attachments to Exhibit 1, show that by letter of acceptance from the Secretary of the Army to the California State Lands Commission, dated July 5, 1950, the Department of the Army accepted federal jurisdiction over the subject land in behalf of the United States.

Such acceptance of jurisdiction was made pursuant to the requirements of R. S. §355, 40 U.S.C.A. Section 255, which provides ". . . until the United States has accepted jurisdiction over lands . . . it shall be conclusively presumed that no such jurisdiction has been accepted."

By resolution dated October 5, 1950, the State Lands Commission found "that the conditions prescribed in subdivisions (a), (b) and (c) of section 126 of the Government Code of the State of California had been found to have occurred and to exist, and that such acquisition is in the interests of the State" (Resolution, California State Lands Commission, October 5, 1950, Exhibit 1.)

Certified copies of the Order and Resolution of the State Lands Commission were filed in the office of the Secretary of State and recorded in the office of the County Recorder of Alameda County, where all the land is situated. By letter of October 31, 1950 the State Lands Commission notified the Secretary of the Army that full compliance had been made with Government Code Section 126. (Exhibit 1).

The State of California contends that California Government Code Section 126 operates only as a consent to the acquisition of land by the United States, but not as a transfer of jurisdiction to the United States over the lands.

We are of the opinion, however, that although Sec. 126 contains no express words to that effect, it manifests clearly the intent of the California legislature that it operates to transfer legislative jurisdiction over such lands.

The section makes express reference to land acquisitions for the purposes set forth in the U.S. Constitution, Art. I, Sec. 8, Cl. 17, a provision which deals specifically with the acquisition by the United States of "exclusive legislative jurisdiction", over lands purchased by the United States for such purposes with the consent of the legislature of the State.

Further, Section 126 expressly requires an assent in writing by the United States to "acceptance of jur-

isdiction over the land upon and subject to each and all of the conditions and reservations in this section prescribed."

Further, Sec. 126 makes express "reservations" of State jurisdiction over the land for specific, limited purposes—service of civil and criminal process and the power of taxation. These express reservations of certain limited areas of jurisdiction are consistent only with an intent that jurisdiction would otherwise pass to the United States.

Further, as we shall mention in our discussion of Travis Air Force Base, the Attorney General of California has ruled that the precursor section of the above Government Code sec. 126 (Cal. Pol. Code Sec. 34), which is substantially similar to Government Code Sec. 126, is operative, not only as a mere consent to purchases, but to vest jurisdiction in the United States.

The State of California next contends that, assuming Section 126 is held to operate to transfer legislative jurisdiction, the section's reference to "other conditions or reservations prescribed by law", is in effect a reference to Government Code Section 113, as amended by Stats. 1947, ch. 1532, p. 3164, repealed by Stats. 1955, ch. 1447, p. 2636, which at the time of the acquisition of the lands comprising Oakland Army Terminal provided:

"The State reserves the administration of the criminal law of the State with respect to any land over which any jurisdiction has been or may be ceded or conveyed to the United States, during the time the United States is the owner thereof."

This provision, the State of California argues, reserved the penal provisions of the California Milk

Stabilization Law, e.g., Sections 4361, 4410, from any transfer of jurisdiction.

We are of the opinion, however, that Section 113 is applicable only to lands "ceded" to the United States, as distinguished from lands acquired through purchase or condemnation by the United States with the State's consent as in the case of these Oakland Army Terminal lands.

The distinction between these two methods of acquisition of jurisdiction by the United States over lands becomes clear in the light of the history of the judicial interpretation of Art. I, Sec. 8, Cl. 17 of the Constitution.

At an early date it was suggested that the only means by which the federal government could acquire jurisdiction from the States over lands was the so called purchase-by-consent method provided by Art. I, Sec. 8, Cl. 17. See, *United States* v. *Railroad Bridge Company*, 6 C.C.N.D. Ill. 1855, 27 Fed. Cas. pp. 686, 693, No. 16, 114.

However, in *Fort Leavenworth* v. *Lowe*, 114 U.S. 525 (1885), the Supreme Court sustained the validity of Kansas legislation "ceding" to the United States legislative jurisdiction over Fort Leavenworth, situated on lands which the United States had no cause to "purchase", within the meaning of Art. I, Sec. 8, Cl. 17 of the Constitution, because the lands had been possessed by the United States before the admission of Kansas into the Union.

The Court thus recognized a new method, i.e. "cession", by which the United States might acquire jurisdiction over lands where no "purchase" for constitutionally specified purposes was involved, e.g., when the lands had been part of the public domain

and had been reserved from sale, *Fort Leavenworth* v. *Lowe*, supra, or when, although a purchase was involved, the purpose was not one enumerated by Art. I, Sec. 8, Cl. 17 of the Constitution, *Collins* v. *Yosemite Park Co.*, 304 U.S. 518 (1938).

Following the *Fort Leavenworth* decision, a number of States adopted so-called "cession statutes" to supplement their consent-to-purchase statutes. One of these States was California, which in 1891 adopted its cession statutes, Stats. 1891, ch. 181, p. 262, codified into Government Code Section 113, effective August 4, 1943, referred to above; also, Stats. 1897, ch. 56, p. 51, codified into Government Code Section 114, effective August 4, 1943, until repealed by Stats. 1947, ch. 1532, p. 3164, to which we will later refer in our discussion of Travis and Castle Air Force Bases.

The California Attorney General has himself recognized that acquisition by the federal government of exclusive jurisdiction over land by the consent-to-purchase method, provided in Art. I, Sec. 8, Cl. 17, is distinct from the acquisition of exclusive jurisdiction pursuant to these State "cession" statutes. (See, Report of the California Attorney General, *Jurisdiction Over Federal Enclaves in California*, 1958, pp. 3, 42, 72-73; also, 23 Op. Cal. Attorney General 14 (1954).

We are of the opinion, therefore, that Government Code Sec. 113 did not reserve administration of the criminal provisions of the California Milk Stabilization Act over the lands comprising Oakland Army Terminal.

Defendants next contend that, even though exclusive jurisdiction was effectually tendered to the United States, only "partial" jurisdiction was in fact accepted by the United States in the letter of accept-

ance sent by the Secretary of the Army to the California State Lands Commission, dated July 5, 1950, referred to above, wherein it was stated: "The Department of the Army, in behalf of the United States of America, hereby assents to the acceptance of federal jurisdiction over the subject land."

Defendants make the point that the use of the phrase "federal jurisdiction" by the Secretary of the Army and his omission of the phrase "exclusive jurisdiction," a phrase which appeared in previous letters of this kind from the Secretary of War, signifies an intent to accept only "partial" jurisdiction.

We do not agree with this contention. The letter of acceptance from the Secretary of the Army, forwarded pursuant to R.S. §355, 40 U.S.C.A. Section 255, referred to above, accepts federal jurisdiction without qualification. This letter effectively accepted the exclusive jurisdiction contemplated by Art. I, Sec. 8, Cl. 17 of the Constitution.

B. Travis Air Force Base

The United States alleges and the record shows without contradiction that the lands on which Travis Air Force Base is located were acquired by the United States between December, 1942, and March, 1943, through various purchases and condemnations, for military purposes under the provisions of Art. I, Sec. 8, Cl. 17 of the Constitution. (Attachments A and B to LaBuda's Affidavit; and deeds and condemnation awards attached to Exhibits 1, 2 and 3).

California Political Code Section 34, codified into Government Code Section 111, Stats. 1943, ch. 134, p. 1009, repealed by Stats. 1947, ch. 1532, p. 3164, at the time of these acquisitions provided: "The Legisla-

ture consents to the purchase or condemnation by the United States of any tract of land within this State for the purpose of erecting forts . . . and other needful buildings . . . upon the express condition that all civil and criminal process may be served thereon.

On April 16, 1943, the Secretary of War communicated with the Governor of California, pursuant to R. S. §355, 40 U.S.C.A. Section 255, accepting "exclusive jurisdiction over all lands acquired by (the United States) for military purposes within the State of California, title to which has heretofore vested in the United States and over which exclusive jurisdiction has not heretofore been obtained." (Exhibit 4).

The State of California contends that California Political Code Section 34 operates only as a consent to the acquisition of land by the United States, but not as a transfer of jurisdiction to the United States over lands so acquired.

The California Attorney General has, himself, held that, under Art. I, Sec. 8, Cl. 17 of the United States Constitution, and under California Political Code Section 34, "jurisdiction" vests in the federal government upon compliance by the latter with its own statutes. See, also, *Report of the California Attorney General, Jurisdiction over Federal Enclaves in California,* 3, 72-3 (1958). We concur in this view.

The State of California next contends that the United States did not effectively accept any tendered transfer of jurisdiction by the State, because it failed to comply with Cal. Stats. 1897, ch. 56, p. 51, codified into Government Code Section 114, which at the time of the acquisition of Travis Air Force Base provided:

"The State of California hereby cedes to the United States of America exclusive jurisdiction over all lands

within this State now held, occupied or reserved by the Government of the United States for military purposes or defense, or which may hereafter be ceded or conveyed to said United States for such purposes, provided that a sufficient description by metes and bounds and a map or plat of such lands be filed in the proper office of record in the county in which the same are situated . . . ." The act further reserves the right to serve civil and criminal process.

Specifically, the State of California contends that no such map or description by metes and bounds was ever filed.

As we have already noted in our discussion of Oakland Army Air Base, Stats. 1897, ch. 56, and its related Stats. 1891, ch. 181, p. 262, are "cession" statutes, and are inapplicable to transfers of jurisdiction to the United States pursuant to the consent-to-purchase method provided in Art. I, Sec. 8, Cl. 17 of the Constitution.

In the report of the California Attorney General previously cited, it is specifically stated (p. 72-3) that the map or plat filing requirements of Stats. 1897, ch. 56 (Government Code sec. 114) are not applicable to such transfers.

C. Castle Air Force Base

The complaint alleges and the record shows without contradiction that the portion of Castle Air Force Base on which sales and deliveries of milk and milk products take place is a so-called Tract A, some eighteen acres of land, more or less, which the United States claims to have acquired for military purposes, within the meaning of Art. I, Sec. 8, Cl. 17 of the Constitution, under a deed, dated April 6, 1943, from

one Sheldon M. Phillips to the United States. (Mann's Affidavit, p. 5; Attachment A to Dame's Affidavit).

At the time of the acquisition, the California consent-to-purchase statute was Political Code Section 34, referred to in our discussion of Travis Air Force Base, supra.

On April 16, 1943, ten days after the date of the deed under which the United States claims to have acquired Tract A for military purposes, the Secretary of War communicated with the Governor of California, pursuant to R. S. §355, 40 U.S.C.A. Section 255, accepting "exclusive jurisdiction over all lands acquired by (the United States) for military purposes within the State of California, title to which has heretofore vested in the United States and over which exclusive jurisdiction has not heretofore been obtained." (Exhibit 4).

The contentions of the defendants as to Castle Air Force Base are for the most part similar to those raised in connection with Travis Air Force Base, which we have already discussed.

In one respect, however, Castle Air Force Base presents a special problem. The State of California contends that the United States did not acquire title to Tract A, Castle Air Force Base, for military purposes on April 6, 1943, nor even by April 16, 1943, the date of the Secretary of War's letter to the Governor of California, accepting exclusive jurisdiction of all land "title to which has heretofore vested in the United States." Therefore, argues the State, Tract A was not included within the terms of that letter, and the United States has not in fact accepted exclusive jurisdiction over Tract A.

The record shows that Tract A was originally acquired by the National Housing Agency for the construction of war housing (Attachments B and C to Dame's Affidavit), under the provisions of the Lanham Act, 54 Stat. 1125, 42 U.S.C.A. Section 1521, et seq., Section 10 of which precludes the United States from accepting exclusive jurisdiction over land so acquired.

Thereafter by letter, dated October 21, 1942, effective September 1, 1942, Tract A was transferred from the National Housing Agency to the War Department. (Attachment D to Dame's Affidavit). On April 6, 1943, pursuant to a lawful condemnation action, a deed from one Sheldon M. Phillips to the United States was delivered to the War Department. (Attachment A to Dame's Affidavit), and the certificate of title was declared satisfactory by the United States Attorney General by letter dated September 29, 1943, addressed to the Secretary of War. (Attachment E to Dame's Affidavit.)

The State of California contends, however, that title to Tract A did not pass to the United States under this deed of April 6, 1943, for the reason that the grantor, Sheldon M. Phillips, did not himself receive title to Tract A until July 17, 1943, when he received a deed from the Federal Farm Mortgage Corporation. (Affidavit of Paul Andrew; Attachment A thereto). Therefore, argues the State, Phillips' prior deed of April 6, 1943 did not pass title to the United States until at least July 17, 1943, under the rule of after-acquired title, set forth in California Civil Code Section 1106.

Defendants contend that there is thus presented a material issue of fact relative to the time of the

transfer of title to the United States, and that for this reason the Court cannot grant summary judgment in the case of Castle Air Force Base.

Assuming, without deciding, that the Phillips deed of April 6, 1943 did not effectively convey title in Tract A to the United States, and that, therefore, Tract A was not within the terms of the Secretary of War's letter of acceptance of exclusive jurisdiction, we note that there is contained in the record another and subsequent letter, dated January 3rd of the following year, 1944, which accepts exclusive jurisdiction in terms similar to the prior letter of April 16, 1943. (Part of Exhibit 12).

It is clear, even upon the State's theory, that the United States had acquired title to Tract A by July 17, 1943 (Andrew Affidavit, supra). In that case, the letter of the Secretary of War, dated January 3, 1944, accepting exclusive jurisdiction over all lands title to which had previously vested in the United States, was applicable by its terms to Tract A and effectively accepted jurisdiction over it, even if the previous acceptance letter of April 16, 1943 did not. (Exhibit 12, supra).

The State of California makes the further point that Section 10 of the Lanham Act, under which Tract A was originally acquired, provides that the United States shall not accept exclusive jurisdiction over lands so acquired.

We are of the opinion, however, that after the transfer of Tract A from the National Housing Administrator to the War Department, pursuant to 42 U.S.C.A. Section 1524, for military purposes, statutory provisions of the Lanham Act, including Section 10, became inapplicable to the land. The War Department

would not be subject to statutory provisions pertinent only to lands held by the National Housing Agency for Lanham Act purposes. Upon its acquisition of Tract A for its own military purposes the War Department held it subject only to statutes pertinent to its own powers and purposes.

In the possession of the War Department, Tract A came within the provisions of Article 1, Section 8, Clause 17 of the Constitution and, with the consent of the State of California provided in Political Code Section 34, the United States, through the War Department, could accept exclusive jurisdiction over it.

There is, therefore, no material issue of fact involved in our conclusion that Castle Air Force Base is within the exclusive jurisdiction of the United States.

VI. THE ISSUE OF THE SUPREMACY CLAUSE

We turn now to the contention of the plaintiff that, even if these installations are not within the exclusive jurisdiction of the United States, there is a conflict between the California Milk Stabilization Act and federal procurement regulations and policy, and that, therefore, the milk act, so far as the United States is concerned, violates the Supremacy Clause of the Constitution, Art. VI, Cl. 2.

In considering whether the California Milk Act is inconsistent with federal procurement regulations and policy, we must bear in mind that the Supreme Court in the *Penn Dairies* decision, referred to at the outset of this opinion, held, *inter alia*, that the Pennsylvania Milk Control Law of April 28, 1937, P. L. 417, Purdon's Pa. Stat. Ann., Title 31 Section 700j—101 et seq., which is similar to the California Act, was not in

conflict with any federal procurement statute, regulation or policy.

The Court there took the view that federal legislation did not disclose a purpose to "immunize government contractors from local price-fixing regulations which would otherwise be applicable," (318 U.S. at p. 278) even though such regulations imposed increased economic burdens on the federal government.

The Court particularly noted, however, that the Pennsylvania Milk Control Act was not directed at the federal government or its officers, citing the Pennsylvania State court below, 148 Pa. Super. 261, 270-271, 24 A 2d 717 (1942).

In a more recent expression of the Supreme Court upon the subject of conflict between State regulation and federal procurement policy, *Public Utilities Commission of California* v. *United States*, 355 U.S. 534 (1958), which notes, but distinguishes the above *Penn Dairies* case, it has been held that California Public Utilities Code Section 530 is in clear conflict with federal procurement regulations sanctioning the policy of negotiated rates by federal procurement officers in shipments of federal property.

Section 530 provided in part that the California Public Utilities Commission "may permit common carriers to transport property at reduced rates for the United States, state, county or municipal governments, to such extent and subject to such conditions as it may consider just and reasonable . . ."

In considering the question "whether the United States can be subjected to the discretionary authority of a state agency for the terms on which, by grace, it can make arrangements for services to be rendered it," (355 U.S. at p. 379) the Court discussed federal

procurement policy, stating at p. 540 of 355 U.S.: "Congress has provided a comprehensive policy governing procurement." Then, at p. 542 at 355 U.S.: "It seems clear that these regulations—which have the force of law, *Leslie Miller, Inc.* v. *Arkansas*, 352 U.S. 187; *Standard Oil Co.* v. *Johnson*, 316 U.S. 481—sanction the policy of negotiating rates for shipment of federal property and entrust the procurement officers with the discretion to determine when existing rates will be accepted and when negotiation for lower rates will be undertaken."

Federal procurement policy, dealing with federal contracts and purchases, whether in relation to the procurement of transportation or milk or other property or services, is set forth in the provisions of the Armed Services Procurement Act of 1947, 62 Stat. 22, 10 U.S.C. Section 2301, et seq., described in the House of Representatives report as "a comprehensive revision and restatement of the laws governing the procurement of supplies and services." (House Rept. 109, 80th Cong., 1st. Sess., p. 6).

That competitive bidding is the cornerstone of this policy is exemplified by 10 U.S.C. Section 2304(a), which provides that purchases of property or services, or contracts therefor, shall be made by competitive bidding through formal advertising.

That section allows heads of agencies in certain special situations to negotiate purchases or contracts, rather than observe the basic competitive bidding policy, as, for example, purchases of perishable or nonperishable subsistence supplies, such as milk. Section 2304(a)(9).

Notwithstanding this last mentioned statutory exception, fluid milk is purchased at Travis and Castle Air Force Bases by the Air Force through competitive,

advertised contracts, pursuant to Air Force Procurement Instructions 2-102(c)(1).

Another exception, which should be noted, is Section 2304(a)(10), which authorizes negotiation where the purchase or contract is for property or services for which it is "impracticable to obtain competition." Defendants have sought to rely upon this exception, contending that it is "impracticable to obtain competition" where the State has established minimum milk prices. However, 32 C.F.R. Section 3.210-3 provides that this exception is inapplicable where negotiation is authorized for the purchase of perishable or non-perishable subsistence supplies, such as milk.

In any event, the procurement regulations are clear as to the paramount objective of defense procurement policy: "*Such procurement shall be made on a competitive basis whether by formal advertising or by negotiation, to the maximum practicable extent.*" 32 C.F.R. Section 4.301. (emphasis supplied).

We note further that milk and milk products are included within a general procurement scheme so comprehensive that it is designed, not only for economy and efficiency, but also for health and quality control. For example, 32 C.F.R. Section 608.1, specifically requires the award of contracts for procurement of milk or milk products to be limited to dairies which have passed defense inspections or which have been certified by federal authorities as approved sources of supply. See, also 32 C.F.R. Sections 156.1, 156.2, regarding inspection generally, and 32 C.F.R. Section 608.3, regarding the inspection of milk plants and dairy farms.

It is evident, therefore, as stated in the *Public Utilities* case, that Congress has provided a comprehensive policy governing procurement. This is just as true in

the case of milk purchases as it is in the case of transportation-rate contracts.

In the *Public Utilities* case the Court noted that California Public Utilities Code Section 2112 provided penalties applicable, not only to the carrier, but to shippers as well, and that the prohibition of the statute was so broad as to deny the United States the right to ship at reduced rates without State Commission approval.

The Supreme Court in the *Public Utilities* case, did not point to any provision of the Public Utilities Code; or any other California law or decision, which would expressly or impliedly indicate a legislative intent to aim the penal provisions of the Public Utilities Code directly at the federal government and its officers, if they should be shippers in violation of the code. The Court nevertheless, took the view that the Code was so directed, sighting the District Court opinion (355 U.S. at p. 538): "'If a United States officer were to negotiate with a carrier for 'reduced rates' without permitting the defendant to determine whether it 'considered' the conditions of the contract 'just and reasonable,' he could be thrown into the county jail.' 141 F. Supp. at [168] at p. 186."

The Court listinguished the *Penn Dairies* decision for the stated reason that there, the Court (318 U.S. at p. 270) had concluded that the State regulation "imposes no prohibition on the national government or its officers." In the *Public Utilities* case, the Court continued, ". . . the State places a prohibition on the Federal Government." 355 U.S., at p. 544.

The United States contends that, even if the *Penn Dairies* decision has not been overruled in effect by the *Public Utilities* case, supra, the *Penn Dairies*

decision is inapplicable here for the same reason on which it was distinguished in the *Public Utilities* case, i.e., that the California Milk Stabilization Act, unlike the Pennsylvania Milk Control Act, does impose a prohibition on the federal government and its officers.

In our consideration of the merit of this contention we note certain provisions of the California Milk Act which are quite analogous to the provisions of the Public Utilities Code considered in the *Public Utilities* case.

Under Section 4361 of the California Milk Law, the duty to observe established minimum milk prices and penalties for failure to do so, are imposed, not only upon milk producers and distributors with respect to their sales of milk, but also upon all retail stores, restaurants, confectioneries, or *other places for consumption on or off the premises*, (emphasis supplied) which "purchase" milk from distributors, or which sell to any consumer.

Section 4361 contains further broad provisions designed to make such "purchases" of milk unlawful regardless of the method or device utilized, and regardless of whether they are effected directly or through agents, employees, or subsidiaries.

Section 4280(f) makes it unlawful to handle milk within the marketing areas of the State which is to be sold at less than established minimum prices "at any place, whether part of the marketing area or not."

Section 4410 makes the violation of any provision of the act, or of any stabilization and marketing plan, or of any order of the director, or of any of the unfair practices thereof, a misdemeanor.

The language of these sections is broad enough to include the federal government and its procurement

officers, as purchasers of milk from distributors at the various federal military reservations for consumption either on base in the military mess halls, or off base through retail sales made in military commissaries.

We are unable to discover any substantial difference between the situation considered in the *Public Utilities* case and the situation here presented.

The federal procurement statutes, regulations and policy there were substantially similar to those here involved.

The Public Utilities Code there considered, applied not only to carriers, but to shippers, including shipments by the United States. So, also here, the milk act applies not only to milk producers and distributors, but also to purchasers of milk, including purchases of milk by the United States. Indeed, the basic contention of the State of California in its brief, and the ruling of its Supreme Court in *Pacific Coast Dairy, Inc.* v. *Department of Agriculture*, 19 Cal. 2d 818, 123 P. 2d 442 (1942), has been and is, that its milk act applies to sales of milk in which the United States is the purchaser.

In the *Public Utilities* case the United States was "subjected to the discretionary authority of a state agency for the terms on which, by grace, it can make arrangements for services to be rendered it." 355 U.S. at page 539. So, also, here the United States is subjected to the discretionary authority of the Director of the California Department of Agriculture (who establishes minimum milk prices for marketing areas) for the terms on which by grace, it can make arrangements for purchases of milk at its various military installations.

In the briefs in the pending case, the State of California disclaims any intent to enforce the penal provisions of its milk act against the United States or its procurement officers. A similar disclaimer proved of no avail in the *Public Utilities* case. (See reference to record 355 U.S. at p. 551).

We conclude, therefore, that even if the *Penn Dairies* case has not been in effect overruled by the *Public Utilities* case, it is inapplicable here because the California Milk Stabilization Act "places a prohibition on the Federal Government" within the meaning of the *Public Utilities* case, and, therefore, so conflicts with federal procurement statutes and policy as to be invalid under the Supremacy Clause, Art. VI, Sec. 2.

VII. THE ISSUE OF ASSIMILATION

Defendants contend that, even if the State be deemed to have transferred exclusive jurisdiction over the three bases here involved to the federal government, the existing criminal laws of California remained operative therein or became operative thereto by virtue of the provisions of Title 18 U.S.C. Section 13, the so-called Assimilative Crimes Act, as amended in 1948, which provides:

> "Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in Section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof at the time of such act or omission, shall

be guilty of a like offense and subject to a like punishment."

Title 18 U.S.C. Section 7, referred to in the foregoing section, provides, subsection (3), that the term "special maritime or territorial jurisdiction of the United States" includes:

> "Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building."

It has been held that Title 18, U.S.C. Section 13 is not an unconstitutional delegation of power to the State legislatures, even though it in effect makes applicable to a federal enclave subsequently enacted criminal laws of the State within which the enclave is located. *United States* v. *Sharpnack*, 355 U.S. 286 (1958).

The statute constitutes an adoption by Congress for federal enclaves of State criminal law, when federal criminal law has not defined a certain offense or provided for its punishment. *People of Puerto Rico* v. *Shell Co.*, 302 U.S. 253 (1937). The State law, assimilated under this section, becomes in effect federal law. *Johnson* v. *Yellow Cab Co.*, 321 U.S. 383 (1944).

In *Pacific Coast Dairy, Inc.* v. *Department of Agriculture*, 1943, 318 U.S. 285, at page 294, the possibility of the assimilation of local law was noted by the Supreme Court, with this statement: "When the federal government acquired the tract (Moffet Field), local law not inconsistent with federal policy remained in

force until altered by national legislation," citing *Stewart & Co.* v. *Sadrakula*, 309 U.S. 94 (1940).

The Court further noted, however, that Moffet Field, there involved, had been acquired by the United States in 1931, long before the enactment of the milk stabilization law in 1935, and concluded that no assimilation had occurred in the case of Moffet Field.

Defendants point out that Travis and Casfle Air Force Bases, acquired by the United States in 1943, and Oakland Army Terminal, acquired in 1950, were all acquired subsequent to the enactment of the California Milk Stabilization Act of 1935. They argue that by operation of the Assimilative Crimes Act, enacted in its present form in 1948, the penal provisions of the milk act, notably Sections 4361 and 4410, were adopted as federal law on these enclaves.

The Courts have held, however, that the Assimilative Crimes Act does not operate to adopt any State penal statutes which are in conflict with federal policy, as expressed by acts of Congress or by valid administrative regulations having the force of law. *Air Terminal Services Inc.* v. *Rentzel* D.C.E.D. Va. 1949, 81 F. Supp. 611; *Nash* v. *Air Terminal Services Inc.*, D.C.E.D. Va. 1949, 85 F. Supp. 545; *Johnson* v. *Yellow Cab Co.*, supra.

If, therefore, we are correct in our ruling that the California milk act is in conflict with federal procurement regulations and policy within the meaning of the *Public Utilities* case, the penal provisions of the act were not assimilated into the installations here involved.

Even if we assume that there is no conflict between the California milk act and federal procurement policy

and further, that its penal provisions could have been assimilated in these installations notwithstanding exclusive federal jurisdiction over them, any such assimilated provisions would have become federal, not state law, and as such, their enforcement would be the prerogative of the United States Attorney General and the various United States Attorneys.

The State of California, conceding that such would be the case, takes the position that, although violations of assimilated provisions of the milk laws within federal enclaves would be subject to prosecution only by federal authorities in the federal courts, violations of the milk act would also be subject to prosecution by State authorities in State Courts when such violations involved conduct of distributors occurring on state territory and constituting a violation of state law. *Commonwealth* v. *Rohrer*, 1937 37 Pa. Dist. & Co. 410.

In this respect, we note that Section 4280(f) of the milk act, already referred to, makes it unlawful to handle milk within the marketing areas of the State which is to be sold at less than established minimum prices at any place, whether part of the marketing area or not.

We understand the position of the defendants to be that, assuming assimilation of the penal provisions of the milk act in exclusive jurisdiction enclaves, such circumstance would be an equitable factor for this Court to consider before granting injunctive relief to the federal government, which in effect would preclude the State from enforcing its milk law against distributors selling to the federal government even though their conduct may occur on State territory and constitute unlawful conduct under State law.

Such a contention would, in any event, be pertinent to the pending cases only indirectly, and collaterally.

Absent a prosecution by the federal government under the provisions of the Assimilative Crimes Act, this Court would abstain from a ruling upon the question whether the milk act, if not in conflict with federal regulation and policy, would have been assimilated within these enclaves.

In *Johnson* v. *Yellow Cab Co.*, 321 U.S. 383, Oklahoma State enforcement officials, enjoined on petition of a common carrier from attempting to enforce State liquor laws with respect to purchases of liquor at Fort Sill military reservation, contended that the State liquor law had been assimilated at the base. The Supreme Court refrained from ruling on this point, saying: (321 U.S. at pp. 292-293)—

> "If the carrier's delivery of these liquors on the Fort Sill Reservation would violate any federal law, federal agencies exist which are charged with responsibilities to institute appropriate proceedings against the carrier in federal tribunals. In such proceedings the parties would be the United States and the carrier, and the issue of violation of federal laws would be directly, and not collaterally, presented. The complicated federal questions involved, concerning various federal statutes as well as Army rules and regulations, could be answered upon an adequate presentation of all facts essential to a right and just termination."

CONCLUSION

For the reasons herein stated, the Court concludes, subject to the preparation by the plaintiff in these cases, as prevailing party, of findings of fact and conclusions of law, decree and writ, and settlement and

signing thereof by the Court, pursuant to Rule 21 of this Court:

That, in Civil Action No. 39030, defendants' motion to stay proceedings, to quash the temporary restraining order and to deny the petition for preliminary injunction, be denied; that a decree be entered declaring the aforesaid sections of the California Agricultural Code, insofar as they prohibit or authorize the prohibiting of distributors and producers of milk within the State of California from selling and delivering milk to the United States at the Oakland Army Terminal at rates lower than those established by defendants, as unconstitutional and void; and, that the defendants, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, be permanently enjoined from making any effort to prohibit such producers and distributors or the United States and its purchasing agents from negotiating and making arrangements and contracts for the sale and delivery of fluid milk to the United States at the Oakland Army Terminal at rates lower than those established by defendants;

Further, that in Civil Action No. 39073, defendants' motion to stay proceedings, to quash the temporary restraining order and to deny the petition for preliminary injunction, be denied, and that plaintiff's motion for summary judgment be granted, and that a decree be entered declaring the aforesaid sections of the California Agricultural Code, insofar as they prohibit or authorize the prohibiting of distributors and producers of milk within the State of California from selling and delivering milk to the United States at Travis Air Force Base and Castle Air Force Base at rates lower than those established by defendants,

as unconstitutional and void; and, that the defendants, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, be permanently enjoined from making any effort to prohibit such producers, distributors, or the United States and its purchasing agents from negotiating and making arrangements and contracts for the sale and delivery of fluid milk to the United States at Travis Air Force and Castle Air Force Bases at rates lower than those established by defendants.

Dated: November 29th, 1960.

GILBERT H. JERTBERG
United States Circuit Judge

GEORGE B. HARRIS
United States District Judge

WILLIAM T. SWEIGERT
United States District Judge

II. ORDER RE FINDINGS

[Title of Court Omitted]

UNITED STATES OF AMERICA,
Plaintiff,
vs.
WILLIAM E. WARNE, Director of Agriculture of the State of California, and STANLEY MOSK, Attorney General, State of California,
Defendants.

No. 39030 and 39073 Order

This Court, in its Memorandum Opinion herein, directed plaintiff, as prevailing party, to prepare findings of fact and conclusions of law, and appropriate decree and writ, subject to the settlement and signing thereof, pursuant to Rule 21 of this Court.

Now, upon the written request of both parties herein, the Court withdraws its direction to prepare findings of fact and conclusions of law, and adopts its Memorandum Opinion herein as sufficient, under Rule 52, Federal Rules of Civil Procedure, to constitute the Court's findings of fact and conclusions of law herein.

Therefore, the language of that Memorandum Opinion, page 33, lines 8-11 thereof, directing the plaintiff as prevailing party, to prepare findings of fact and conclusions of law, is hereby stricken, and the plaintiff will prepare an appropriate order and decree herein. Dated: March 27, 1961.

GILBERT H. JERTBERG
United States Circuit Judge

GEORGE B. HARRIS
United States District Judge

WILLIAM T. SWEIGERT
United States District Judge

III. JUDGMENTS

[Title of Court Omitted]

UNITED STATES OF AMERICA, *Plaintiff*, vs. CHARLES PAUL, Director of Agriculture, State of California, and STANLEY MOSK, Attorney General, State of California, *Defendants*.	Civil No. 39030

ORDER AND INJUNCTION

This cause having come on for hearing on an application by the United States of America for an injunction restraining defendants from enforcing the minimum price provisions of Chapter 17, Div. 6, California Agricultural Code and of regulations issued thereunder, with respect to sales and deliveries of milk and milk products to the United States at Oakland Army Terminal, upon the ground that such enforcement is unconstitutional, and upon defendants' motion to stay proceedings, to quash the temporary restraining order and deny the petition for injunction, and the Court having heretofore, on November 29, 1960 filed its Memorandum Opinion, and by Order filed March 27, 1961 adopted said Memorandum Opinion as sufficient under Rule 52, Federal Rules of Civil Procedure, to constitute the Court's findings of fact and conclusions of law,

NOW, THEREFORE, it is this 17th day of April, 1961, ORDERED:

1. Defendants' motion to stay proceedings is denied;

2. Defendants' motion to quash the temporary restraining order and to deny the petition for injunction is denied;

3. Defendants and each of them and their agents, servants, employees, and attorneys, successors and assigns, and all persons in active concert or participation with them be and they hereby are permanently enjoined and restrained from enforcing or attempting to enforce against producers or distributors of milk or milk products or against the United States or its purchasing agents, with respect to sales, purchases, or deliveries of milk or milk products at the Oakland Army Terminal, either the state minimum producer price, wholesale price, or retail price regulations promulgated by the Director of Agriculture pursuant to the California Milk Stabilization Act.

(S) GILBERT H. JERTBERG
United States Circuit Judge

GEORGE B. HARRIS
United States District Judge

W. T. SWEIGERT
United States District Judge

[Title of Court Omitted]

UNITED STATES OF AMERICA,
Plaintiff,
vs.
CHARLES PAUL, Director of Agriculture, State of California, and STANLEY MOSK, Attorney General, State of California,
Defendants.

Civil No. 39073

ORDER AND INJUNCTION

This cause having come on for hearing on an application by the United States of America for an injunction restraining defendants from enforcing the minimum price provisions of Chapter 17, Div. 6, California Agricultural Code and of regulations issued thereunder, with respect to sales and deliveries of milk and milk products to the United States at Travis Air Force Base and Castle Air Force Base, upon the ground that such enforcement is unconstitutional, and upon defendants' motion to stay proceedings, and the Court having heretofore on November 29, 1960 filed its Memorandum Opinion, and by Order filed March 27, 1961 adopted said Memorandum Opinion as sufficient under Rule 52, Federal Rules of Civil Procedure, to constitute the Court's findings of fact and conclusions of law,

NOW, THEREFORE, it is this 17th day of April, 1961,

ORDERED:

1. Defendants' motion to stay proceedings is denied;

2. Defendants' and each of them and their agents, servants, employees, and attorneys, successors and assigns, and all persons in active concert of participation

with them be and they hereby are permanently enjoined and restrained from enforcing or attempting to enforce against producers or distributors of milk or milk products or against the United States or its purchasing agents, with respect to sales, purchases, or deliveries of milk or milk products at Travis or Castle Air Force Bases, either the state minimum producer price, wholesale price, or retail price regulations promulgated by the Director of Agriculture pursuant to the California Milk Stabilization Act.

(S) GILBERT H. JERTBERG
United States Circuit Judge

GEORGE B. HARRIS
United States District Judge

W. T. SWEIGERT
United States District Judge

IV. NOTICES OF APPEAL TO THE UNITED STATES COURT OF APPEALS

[Title of Court Omitted]

UNITED STATES OF AMERICA, *Plaintiff*, vs. CHARLES PAUL, Director of Agriculture, State of California, and STANLEY MOSK, Attorney General, State of California, *Defendants*.	Civil No. 39030

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

I. Notice is hereby given that CHARLES PAUL and STANLEY MOSK, defendants above-named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final Order re findings, entered March 27, 1961, and from the final Order and Injunction entered in this action on April 18, 1961.

II. The Clerk will please prepare a transcript of the complete record in this cause, including the docket, for transmission to the Clerk of the Court of Appeals for the Ninth Circuit pursuant to Rule 10, Rules of the Court of Appeals for the Ninth Circuit. Dated: May 11, 1961

STANLEY MOSK, Attorney General
of the State of California

JOHN FOURT
Deputy Attorney General

LAWRENCE E. DOXSEE
Deputy Attorney General

By s/ JOHN FOURT

[Title of Court Omitted]

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CHARLES PAUL, Director of Agriculture, State of California, and STANLEY MOSK, Attorney General, State of California,
Defendants.

Civil No. 39073

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

I. Notice is hereby given that CHARLES PAUL and STANLEY MOSK, defendants above-named hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final Order re findings, entered March 27, 1961, and from the Order and Injunction entered on April 18, 1961, in this action.

II. The Clerk will please prepare a transcript of the complete record in this cause, including the docket and the transcript of record and docket entries in Action 39080 in the above-entitled Court, for transmission to the Clerk of the Court of Appeals for the Ninth Circuit pursuant to Rule 10, Rules of the Court of Appeals for the Ninth Circuit. Dated: May 11, 1961.

STANLEY MOSK
Attorney General of the
State of California

JOHN E. FOURT
Deputy Attorney General

LAWRENCE E. DOXSEE
Deputy Attorney General

By s JOHN FOURT
Attorneys for Defendants.

V. PERTINENT CONSTITUTIONAL AND FEDERAL STATUTORY PROVISIONS.

A. Constitution of the United States, Article I, Section 8, provides in part, as follows:

"The Congress shall have power . . . .

"To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;"

B. Federal procurement statutes: The statutes governing procurement by the federal defense agencies are found in 10 U.S.C. sections 2301-2314 which provide:

"2301. Declaration of Policy.

It is the policy of Congress that a fair proportion of the purchases and contracts made under this chapter be placed with small business concerns."

"2302. Definitions.

In this chapter—

(1) "Head of an agency" means the Secretary, the Under Secretary, or any Assistant Secretary of the Army, Navy, or Air Force; the Secretary of the Treasury; or the Administrator of the National Aeronautics and Space Administration.

(2) "Negotiate" means make without formal advertising.

(3) "Formal advertising" means advertising as prescribed by section 2305 of this title."

"2303. Applicability of chapter.

(a) This chapter applies to the purchase, and contract to purchase, by any of the following agencies, for its use or otherwise, of all property named in subsection (b), and all services, for which payment is to be made from appropriated funds.

(1) The Department of the Army.
(2) The Department of the Navy.
(3) The Department of the Air Force.
(4) The Coast Guard.
(5) The National Aeronautics and Space Administration.

(b) This chapter does not cover land. It covers all other property including—

(1) public works;
(2) buildings;
(3) facilities;
(4) vessels;
(5) floating equipment;
(6) aircraft;
(7) parts;
(8) accessories;
(9) equipment; and
(10) machine tools.

(c) The provisions of this chapter that apply to the procurement of property apply also to contracts for its installation or alteration."

"2304. Purchases and contracts; formal advertising; exceptions.

(a) Purchases of and contracts for property or services covered by this chapter shall be made by

formal advertising. However, the head of an agency may negotiate such a purchase or contract if—

(1) it is determined that such action is necessary in the public interest during a national emergency declared by Congress or the President;

(2) the public exigency will not permit the delay incident to advertising;

(3) the aggregate amount involved is not more than $2,500;

(4) the purchase or contract is for personal or professional services;

(5) the purchase or contract is for any service by a university, college, or other educational institution;

(6) the purchase or contract is for property or services to be procured and used outside the United States and the Territories, Commonwealths, and possessions;

(7) the purchase or contract is for medicine or medical supplies;

(8) the purchase or contract is for property for authorized resale;

(9) the purchase or contract is for perishable or nonperishable subsistence supplies;

(10) the purchase or contract is for property or services for which it is impracticable to obtain competition;

(11) the purchase or contracts is for property or services that he determines to be for experimental, developmental, or research work, or for making or furnishing property for experiment, test, development, or research;

(12) the purchase or contract is for property or services whose procurement he determines should

not be publicly disclosed because of their character, ingredients, or components;

(13) the purchase or contract is for equipment that he determines to be technical equipment whose standardization and the interchangeability of whose parts are necessary in the public interest and whose procurement by negotiation is necessary to assure that standardization and interchangeability;

(14) the purchase or contract is for technical or special property that he determines to require a substantial initial investment or an extended period of preparation for manufacture, and for which he determines that formal advertising and competitive bidding might require duplication of investment or preparation already made or would unduly delay the procurement of that property; or

(15) the purchase or contract is for property or services for which he determines that the bid prices received after formal advertising are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which (A) he has notified each responsible bidder of intention to negotiate and given him reasonable opportunity to negotiate; (B) the negotiated price is lower than the lowest rejected bid of any responsible bidder, as determined by the head of the agency; and (C) the negotiated price is the lowest negotiated price offered by any responsible supplier;

(16) he determines that (A) it is in the interest of national defense to have a plant, mine, or other facility, or a producer, manufacturer, or other supplier, available for furnishing property or services in case of a national emergency; or (B) the

interest of industrial mobilization in case of such an emergency, or the interest of national defense in maintaining active engineering, research, and development, would otherwise be subserved; or

(17) negotiation of the purchase or contract is otherwise authorized by law.

(b) The data respecting the negotiation of each purchase or contract under clauses (1) and (7)—(17) of subsection (a) shall be kept by the contracting agency or six years after the date of final payment on the contract.

(c) This section does not authorize—

(1) the negotiation of a contract to construct or repair any building, road, sidewalk, sewer main, or similar item, unless—

(A) it is made under clauses (1)—(3), (10)—(12), or (15) of subsection (a); or

(B) it is to be performed outside the United States; or

(2) the erection, repair, or furnishing of any public building or public improvement.

(d) Whenever the head of the agency determines it to be practicable, such advance publicity as he considers suitable with regard to the property involved and other relevant considerations shall be given for a period of at least 15 days before making a purchase of or contract for property, or a service, under clause (7) or (8) of subsection (a) involving more than $10,000.

(e) A report shall be made to Congress on May 19 and November 19 of each year, of the purchases and contracts made under clauses (11) and (16) of sub-

section (a) during the period since the date of the last report. The report shall—

(1) name each contractor;

(2) state the amount of each contract; and

(3) describe, with consideration of the national security, the property and services covered by each contract.

(f) For the purposes of the following laws, purchases or contracts negotiated under this section shall be treated as if they were made with formal advertising:

(1) Sections 35—45 of title 41.

(2) Sections 276a—276a-5 of title 40.

(3) Sections 324 and 325a of title 40."

"2305. Formal advertisements for bids; time; opening; award; rejection.

(a) Whenever formal advertising is required under section 2304 of this title, the advertisement shall be made a sufficient time before the purchase or contract. The specifications and invitations for bids shall permit such free and full competition as is consistent with the procurement of the property and services needed by the agency concerned.

(b) The specification in invitations for bids must contain the necessary language and attachments, and must be sufficiently descriptive in language and attachments, to permit full and free competition. If the specifications in an invitation for bids do not carry the necessary descriptive language and attachments, or if those attachments are not accessible to all competent and reliable bidders, the invitation is invalid and no award may be made.

(c) Bids shall be opened publicly at the time and place stated in the advertisement. Awards shall be made with reasonable promptness by giving written notice to the responsible bidder whose bid conforms to the invitation and will be the most advantageous to the United States, price and other factors considered. However, all bids may be rejected if the head of the agency determines that rejection is in the public interest.

(d) If the head of the agency considers that any bid received after formal advertising evidences a violation of the antitrust laws, he shall refer the bid to the Attorney General for appropriate action."

C. The Lanham Act, 54 Stat. 1125, authorizing the purchase and improvement of land for civilian defense housing provides:

SECTION 1. In order to provide housing for persons engaged in national-defense activities, and their families, in those areas or localities in which the President shall find that an acute shortage of housing exists or impends which would impede national-defense activities and that such housing would not be provided by private capital when needed, the Federal Works Administrator (hereinafter referred to as the 'Administrator') is authorized:

"(a) To acquire prior to the approval of title by the Attorney General (without regard to sections 1136, as amended, and 3709 of the Revised Statutes) improved or unimproved lands or interests in lands by purchase, donation, exchange, lease (without regard to section 322 of the Act of June 30, 1932 (47 Stat. 412), as amended, the Act of March 3, 1877 (19 Stat. 370), or any time limit on the availability of funds for the payment of rent), or condemnation (including

proceedings under the Acts of August 1, 1888 (25 Stat. 357), March 1, 1929 (45 Stat. 1415), and February 26, 1931 (46 Stat. 1421)).

"(b) By contract or otherwise (without regard to sections 1136, as amended, and 3709 of the Revised Statutes, section 322 of the Act of June 30, 1932 (47 Stat. 412), or any Federal, State, or municipal laws, ordinances, rules, or regulations relating to plans and specifications or forms of contract, the approval thereof or the submission of estimates therefor) prior to the approval of title by the Attorney General to, make surveys and investigations, plan, design, construct, remodel, extend, repair, or demolish structures, buildings, improvements, and community facilities, on lands or interests in lands acquired under the provisions of subsection (a) hereof or on other lands of the United States which may be available (transfers of which for this purpose by the Federal agency having jurisdiction thereof are hereby authorized notwithstanding any other provisions of law), provide proper approaches thereto, utilities, and transportation facilities, and procure necessary materials, supplies, articles, equipment, machinery, and do all things necessary in connection therewith, to carry out the purposes of this Act: *Provided*, That the cost-plus-a-percentage-of-cost system of contracting shall not be used, but this proviso shall not be construed to prevent the use of the cost-plus-a-fixed-fee form of contract: *Provided*, That the cost per family dwelling unit shall not exceed an average of $3,000 for those units located within the continental United States nor an average of $4,000 for those located elsewhere, and the cost of no family dwelling unit shall exceed $3,950 within the continental United States or $4,750 else-

where, exclusive of expenses of administration, land acquisition, public utilities, and community facilities, and the aggregate cost of community facilities shall not exceed 3 per centum of the total cost of all projects.

"SEC. 2. As used in this Act (a) the term 'persons engaged in national-defense activities' shall include (1) enlisted men in the naval or military services of the United States; (2) employees of the United States in the Navy and War Departments assigned to duty at naval or military reservations, posts, or bases; (3) workers engaged or to be engaged in industries connected with and essential to the national defense; (b) the term 'Federal agency' means any executive department or office (including the President), independent establishment, commission, board, bureau, division, or office in the executive branch of the United States Government, or other agency of the United States, including corporations in which the United States owns all or a majority of the stock, directly or indirectly.

* * * * *

"SEC. 4. When the President shall have declared that the emergency declared by him on September 8, 1939, to exist, has ceased to exist (a) the authority contained in section 1 hereof shall terminate except with respect to contracts on projects previously entered into or undertaken and court proceedings then pending, and (b) property acquired or constructed under this Act shall be disposed of as promptly as may be advantageous under the circumstances and in the public interest.

* * * * *

"SEC. 7. Notwithstanding any other provisions of law, whether relating to the acquisition, handling, or disposal of real or other property by the United States or to other matters, the Administrator, with respect to any property acquired or constructed under the provisions of this Act, is authorized by means of Government personnel, selected qualified private agencies, or public agencies (a) to deal with, maintain, operate, administer, and insure; (b) to pursue to final collection by way of compromise or otherwise, all claims arising therefrom; (c) to rent, lease, exchange, sell for cash or credit, and convey the whole or any part of such property and to convey without cost portions thereof to local municipalities for street or other public use: *Provided*, That any such transaction shall be upon such terms, including the period of any lease, as may be deemed by the Administrator to be in the public interest: *Provided further*, That the Administrator shall fix fair rentals, on projects developed pursuant to this Act, which shall be within the financial reach of persons engaged in national defense: *Provided further*, That any lease authorized hereunder shall not be subject to the provisions of section 321 of the Act of June 30, 1932 (47 Stat. 412).

"SEC. 8. In carrying out the provisions of this Act the Administrator is authorized to utilize and act through the Federal Works Agency and other Federal agencies and any local public agency, with the consent of such agency, and any funds appropriated pursuant to this Act shall be available for transfer to any such agency in reimbursement therefor. Nothing in this Act shall be construed to prevent the Administrator from employing or utilizing the professional services of private persons, firms, or corporations.

"SEC. 9. The Administrator may enter into any agreements to pay annual sums in lieu of taxes to any State or political subdivision thereof, with respect to any real property acquired and held by him under this Act, including improvements thereon. The amount so paid for any year upon any such property shall not exceed the taxes that would be paid to the State or subdivision, as the case may be, upon such property if it were not exempt from taxation.

"SEC. 10. Notwithstanding any other provision of law, the acquisition by the Administrator of any real property pursuant to this Act shall not deprive any State or political subdivision thereof of its civil and criminal jurisdiction in and over such property, or impair the civil rights under the State or local law of the inhabitants on such property.

"SEC. 11. The Administrator is authorized to make such rules and regulations as may be necessary to carry out the provisions of this Act, and shall establish reasonable standards of safety, convenience, and health.

* * * * *

D. The Joint Resolution of Congress of September 11, 1841, 5 Stat. 468, provided:

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That it shall be the duty of the Attorney General of the United States to examine into the titles of all the lands or sites which have been purchased by the United States, for the purpose of erecting thereon armories, arsenals, forts, fortifications, navy yards, custom-houses, light-houses, or other public buildings of any kind whatever, and report his opinion as to the validity of the title in each case, to the President of the United States.

"2. *Resolved*, That it shall be the duty of all the officers of the United States having any of the title-papers to the property aforesaid in their possession, to furnish them forthwith to the Attorney General, to aid him in the investigation aforesaid.

"3. *Resolved*, That no public money shall be expended upon any site or land hereafter to be purchased by the United States for the purposes aforesaid, until the written opinion of the Attorney General shall be had in favor of the validity of the title, and also the consent of the Legislature of the State in which the land or site may be shall be given to said purchaser.

"4. *Resolved*, That it shall be the duty of the District Attorneys of the United States, upon the application of the Attorney General, to furnish any assistance or information in their power in relation to the titles of the public property aforesaid lying within their respective districts.

"5. *Resolved*, That it shall be the duty of the Secretaries of the Executive Departments, upon the application of the Attorney General, to procure any additional evidence of title which he may deem necessary, and which may not be in the possession of the officers of Government; the expense of procuring which to be paid out of the appropriations made for the contingencies of the Departments respectively.

"6. *Resolved*, That it shall be the duty of the Secretaries of the Executive Departments, respectively, under whose direction any lands for the purposes aforesaid may have been purchased, and over which the United States do not possess jurisdiction, to apply to the Legislatures of the States in which the lands are situated, for a cession of jurisdiction, and in case of

refusal, to report the same to Congress at the commencement of the next session thereafter."

Revised Statutes, Section 355, as enacted 1875:

"No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy-yard, custom-house, light-house, or other public building, of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given. The district attorneys of the United States, upon the application of the Attorney-General, shall furnish any assistance or information in their power in relation to the titles of the public property lying within their respective districts. And the Secretaries of the Departments, upon the application of the Attorney-General, shall procure any additional evidence of title which he may deem necesary, and which may not be in the possession of the officers of the Government, and the expense of procuring it shall be paid out of the appropriations made for the contingencies of the Departments respectively."

Revised Statutes, Section 355, as amended by the Act of October 9, 1940, 54 Stat. 1083, provides:

"'SEC. 355. No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy yard, custom-house, lighthouse, or other public building of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title.

"'Notwithstanding the provisions of this or any other law, whenever the average value of any lands or interests in land to be acquired by or on behalf of the United States under a single option or contract of sale does not exceed $10 per acre (hereinafter referred to as "low-value lands"), the title may be accepted subject to such infirmities as, in the opinion of the Attorney General, may, without jeopardizing the interests of the United States, be left for removal by condemnation or other appropriate proceedings, if and when necessary: *Provided*, That the total value of any lands or interests to be acquired under a single option or contract of sale subject to an infirmity does not exceed $3,500. No public money shall hereafter be expended for the acquisition of such low-value lands or interests in land by or on behalf of the United States for any purpose until the written opinion of the Attorney General has been had approving the title subject, if expedient, to infirmities as herein provided. However, no money in excess of $2,500 shall be expended for the construction of buildings, works, or other improvements (except roads, trails, and fire-protection improvements) on any site, tract, or parcel of land the title to which is subject to infirmities, until the written opinion of the Attorney General in favor of the validity of the title has been had as in the case of other lands. For the purpose of this Act, values of lands and interests in land shall be determined by the consideration paid or to be paid.

"'The Attorney General is hereby authorized to approve the title to easements or rights-of-way to be acquired by or on behalf of the United States, subject to such infirmities as, in his opinion, will not jeopardize the interests of the United States.'

"'Nothing in this Act shall be construed to limit the authority now or hereafter delegated to any officer in exercising the power of eminent domain for or on behalf of the United States, to take title to or possession of or to expend money for or upon any land or interest in land, or to expend money as security for an ultimate award in advance of final judgment in any proceedings to determine just compensation; nor shall this Act be construed to preclude any acquiring agency from expending money for the erection of any preliminary and temporary structure upon any land.

"'The head or other authorized officer of any department, independent establishment, or agency, shall procure any evidence of title which the Attorney General may deem necessary, and the expenses of procurement, except where otherwise authorized by law or provided by contract, may be paid out of the appropriations for the acquisition of land or out of the appropriations made for the contingencies of the acquiring department, independent establishment, or agency.

"'The Attorney General may, in his discretion, base any opinion as to title required either by this Act or any other law upon either or both of the following: Certificates of title of title companies or such evidence of title as he may deem satisfactory.

"'The foregoing provisions of this section shall not be construed to affect in any manner any existing provisions of law which are applicable to the acquisition of lands or interests in land by the Tennessee Valley Authority; and nothing in this section shall be construed to affect in any manner any authority which the Secretary of War, the Chief of Engineers, or the Secretary of the Interior have under the provisions of law in force on the date this section as amended takes ef-

fect with respect to the approval by them of title to land or interests in land acquired by the War Department or the Department of the Interior, as the case may be. Nor shall the foregoing provisions of this section, or the provisions of any other law, be construed to require any opinion of the Attorney General in connection with the acquisition or improvement of easements and rights-of-way for military or naval purposes; or for the acquisition or improvement of easements and rights-of-way by the Department of Agriculture for forest and other conservation purposes where the cost of any such easement of right-of-way acquired under a single instrument of conveyance and the cost of any improvement thereon does not exceed $2,500; and the Attorney General may, in his discretion, waive the requirement for his opinion in connection with the acquisition or improvement of easements and rights-of-way for other purposes when, in his opinion, such waiver will not jeopardize the interests of the United States.

" 'Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the

Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted.'"

VI. PERTINENT CALIFORNIA STATUTORY PROVISIONS.

A. The California milk stabilization act derived from California Statutes of 1935, Chapter 2411, page 922, as amended, is now set forth in California Agricultural Code, Division 6, Chapter 17. Relevant provisions state:

"4200. The production and distribution of fluid milk and of fluid cream and the dissemination of accurate, scientific information as to the importance of milk and other dairy products in the maintenance of a high level of public health, is hereby declared to be a business affected with a public interest. The provisions of this chapter are enacted in the exercise of police powers of this State for the purpose of protecting the health and welfare of the people of this State.

4201. It is hereby declared that fluid milk and fluid cream are necessary articles of food for human consumption; that the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare, and that the production, transportation, processing, storage, distribution or sale of fluid milk and fluid cream in the State of California is an industry affecting the public health and welfare; that unfair, unjust, destructive and demoralizing trade practices have been carried on and are now being carried on in the production, marketing,

sale, processing or distribution of fluid milk and fluid cream, which constitute a constant menace to the health and welfare of the inhabitants of this State and tend to undermine sanitary regulations and standards of content and purity, however effectually such sanitary regulations may be enforced; that health regulations alone are insufficient to prevent disturbances in the milk industry which threaten to destroy and seriously impair the future supply of fluid milk; and to safeguard the consuming public from future inadequacy of a supply of this necessary commodity; that it is the policy of this State to promote, foster and encourage the intelligent production and orderly marketing of commodities necessary to its citizens, including milk, and to eliminate speculation, waste, improper marketing, unfair and destructive trade practices, and improper accounting for milk purchased from producers.

4202. It is recognized by the Legislature that conditions within the milk industry of this State are such that it is necessary to establish marketing areas wherein different prices and regulations are necessary, and for that purpose the Director of Agriculture of this State shall have the administrative authority, with such additional duties as are herein prescribed, after investigation and public hearing, to prescribe such marketing areas and modify the same when advisable or necessary.

4203. The foregoing statements in this article of facts, policy and application of this chapter are hereby declared a matter of legislative determination.

4204. The purposes of this chapter are:

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(b). To authorize and enable the director to prescribe marketing areas and to determine prices to pro-

ducers for fluid milk or fluid cream, or both, which are necessary due to varying factors of costs of production, health regulations, transportation and other factors in said marketing areas of this State; provided, that the cost to distributors within any marketing area for fluid milk or fluid cream shall be uniform with all other distributors purchasing fluid milk and fluid cream of similar grade or quality under like terms and conditions.

* * * * * *

(d) To enable the dairy industry with the aid of the State to correct existing evils, develop and maintain satisfactory marketing conditions, and bring about and maintain a reasonable amount of stability and prosperity in the production and marketing of fluid milk and fluid cream and provide means for carrying on essential educational activities.

4205. It is the intent of the Legislature that the powers conferred in this chapter shall be liberally construed. Nothing in this chapter shall be construed as permitting or authorizing the development of conditions of monopoly in the production or distribution of fluid milk or fluid cream. In the establishment of the terms and conditions under which fluid milk and fluid cream shall be purchased from producers, and under which distributors and retail stores shall sell and distribute the same, such terms and conditions shall be those which will, in the several localities and markets of the State and under the varying conditions of production and distribution insure an adequate and continuous supply of pure fresh wholesome fluid milk and fluid cream to consumers thereof at fair and reasonable prices.

Article 2. Definitions

4210. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

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4212. "Fluid milk" means any and all whole or concentrated milk that is produced in conformity with applicable health regulations for market milk of the place where such milk is consumed.

4213. "Fluid cream" means cream as defined in this code, and any combination of cream and milk, or any fluid product of milk or cream sold under any trade name whatsoever, which is not packaged in hermetically sealed containers and which contains more than 11.8 percent milk fat and conforms to the health and sanitary regulations of the place where sold or disposed of for human consumption.

4214. "Dairy products" includes any product manufactured from milk or any derivative or product of milk.

4215. "Producer" means any person who produces fluid milk from five or more cows or goats in conformity with the applicable health regulations of the place in which it is sold, and whose fluid milk or fluid cream is received or handled by any distributor. "Producer" includes any association of producers.

4216. "Distributor" means any person, whether or not such person is a producer or an association of producers, who purchases or handles fluid milk or fluid cream for sale, including brokers, agents, copartnerships, cooperative corporations and incorporated and unincorporated associations. The definition of "distributor" shall not include any of the following: (1) Any retail store that is actively and directly not en-

gaged in processing and packaging fluid milk or fluid cream, (2) any establishment where fluid milk or fluid cream is sold only for consumption on the premises, that is not actively and directly engaged in processing and packaging fluid milk or fluid cream, (3) any person owned or controlled by one or more retail stores, or owned or controlled by one or more establishments where fluid milk or fluid cream is sold for consumption on the premises which person is not actively and directly engaged in the processing and packaging of fluid milk or fluid cream, (4) any producer who delivers fluid milk or fluid cream only to a distributor, (5) any person as to any transaction where such person purchases processed and packaged fluid milk or fluid cream, but does not thereafter physically handle such fluid milk or fluid cream for sale. The term "physically handle" as used in this subdivision shall mean: (a) to refrigerate or store or assemble individual order allotments at a fixed, established business location prior to transportation on regularly operated routes for sales of fluid milk or fluid cream on such routes to wholesale customers or directly to consumers at their homes or places of work; or (b) to transport in a mobile vehicle or unit regularly operated on routes predominately for sales of fluid milk or fluid cream on such routes to wholesale customers or directly to consumers at their homes or places of work.

4218. "Retail store" means any person or persons owning or operating a retail grocery store, restaurant, confectionery, or other similar business, where fluid milk or fluid cream is sold to the general public for consumption off the premises.

4219. "Marketing area" is any area within this State declared to be such in the manner prescribed in this chapter.

4220. "Stabilization and marketing plan" means any plan formulated and made effective by the director within the legislative standards provided by this chapter and shall include, among other things, the establishing of prices to be paid by distributors for any or all of the various classes of fluid milk or fluid cream.

4221. "Consumer" means any person who purchases fluid milk, fluid cream or dairy products for consumption.

4222. "Person" means any individual, firm, corporation, association or any other business unit.

4223. "Fluid skim milk" means skim milk as defined in this code that is derived from market milk and conforms to the health and sanitary regulations of the place where sold or disposed of for human consumption.

4225. Fluid milk may be classified for the purposes of this chapter as provided in this article.

4226. Class 1 comprises any fluid milk, fluid skim milk, or fluid cream that is supplied to consumers as market milk, market skim milk, or market cream or concentrated milk or any combination of market milk, market skim milk, and market cream, or any market milk which is not sterilized and packaged in hermetically sealed containers, or any other dairy product in which the use of market milk or any components or derivatives of market milk is required by or pursuant to the provisions of this code, or any fluid milk, fluid skim milk, fluid cream, milk-fat, or milk solids not fat used in the standardizing or fortifying of market milk or any dairy product defined herein as Class 1.

4227. Class 2 comprises any fluid milk, fluid skim milk or fluid cream which is used in the manufacture of any product for which a definition and standard is

prescribed in Division 4 of this code, except any such product which is included in Classes 1 and 3.

4228. Class 3 comprises all fluid milk, fluid skim milk, or fluid cream, which is used in the manufacture of butter, cheese other than cottage cheese, dried milk, dried skim milk, nonfat dry milk solids, defatted milk solids, dried buttermilk, or any product for which no definition and standards are prescribed in Division 4 of this code; . . .

4230. In designating and prescribing or providing methods for designating and prescribing minimum prices to be paid by distributors to producers for Classes 2 or 3 fluid milk, fluid skim milk or fluid cream, the director may take into consideration all relevant economic factors, including but not limited to the relative market values of the various products involved and the market price of other milk which may be used for the same purposes set forth in such respective classes. In no event shall any distributor pay producers or any association of producers less than the applicable price established for the usage to which the fluid milk, fluid skim milk or fluid cream purchased from them is applied; and no payment shall be made by distributors to producers or any association of producers of prices lower than those established in the applicable stabilization and marketing plan for Class 3 usage.

Article 4. General Powers of the Director

4240. The director shall enforce the provisions of this chapter and any stabilization and marketing plan initiated pursuant to the provisions of this chapter. The director is authorized and directed to adopt and promulgate rules and regulations for the proper administration and enforcement of the provisions of

this chapter. Any such rules or regulations or amendment thereof shall be adopted and promulgated by the director in conformity with the provisions of Chapter 4, (commencing with Section 11370) of Part 1 of Division 3 of Title 2 of the Government Code.

4242. The director is hereby declared to be the instrumentality of this State for the purpose of administering and enforcing the provisions of this chapter and to execute the legislative intent herein expressed, and is hereby vested with the administrative authority described in this chapter.

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4244. The director may issue licenses to distributors and require the registration of producers.

4245. The director may formulate any stabilization and marketing plan as prescribed in this chapter and declare the same effective after public hearing and reasonable notice by mail or otherwise to all producers and distributors of record with the director, affected by such plan.

4246. The director may prescribe minimum prices to be paid by distributors in accordance with a stabilization and marketing plan for fluid milk and classify said milk according to usage by distributors, pursuant to the provisions of this chapter.

4247. In the event that the director establishes under this chapter a stabilization and marketing plan for fluid milk, the director shall prescribe minimum prices to be paid by distributors for fluid cream, fluid skim milk, or milk fat, or fluid skim milk components of such fluid milk, under such a stabilization and marketing plan, pursuant to the provisions of this chapter.

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4254. A full and accurate record of business or acts performed or of testimony taken by the director in pursuance of the provisions of this chapter shall be kept and placed on file in the office of the director.

4255. Any order of the director hereunder substantially affecting the rights of any interested party may be reviewed by any court of competent jurisdiction. Any such action must be commenced within 30 days after the effective date of the order complained of or within 30 days after the injurious effect complained of becomes reasonably apparent.

4256. The director may bring an action to enjoin the violation or the threatened violation of any provision of this chapter or of any order made pursuant to this chapter in the superior court in the county in which such violation occurs or is about to occur. There may be enjoined in one proceeding any number of defendants alleged to be violating the same provisions or orders, although their properties, interests, residence, or place of business, may be in several counties and the violations separate and distinct. Any proceeding brought hereunder shall be governed in all other respects by the provisions of Chapter 3 of Title 7 of Part 2 of the Code of Civil Procedure.

4257. The director may confer, enter into agreements, or otherwise arrange with the constituted authorities of this State, other states, or agencies of the United States with respect to plans relating to the stabilization and distribution of fluid milk and fluid cream within this State or as between this State and other states or the United States, and may exercise his powers hereunder to effectuate and enforce such plans.

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Article 5. Formation and Adoption of Stabilization and Marketing Plans

4270. The director shall designate marketing areas which he deems necessary or advisable to effectuate the purposes of this chapter, and wherein he finds the conditions affecting the production, distribution and sale of fluid milk, fluid cream and fluid skim milk are reasonably uniform. The director shall have the power to establish additional areas or to modify areas theretofore established when he deems the establishment or modification of such areas necessary or advisable to effectuate the purposes of this chapter. When the director finds, after a public hearing in and for each particular marketing area under consideration for consolidation, that conditions of production and distribution are reasonably uniform in two or more such marketing areas wherein stabilization and marketing plans and minimum wholesale and minimum retail prices are in effect, he may consolidate the areas; provided, that at said hearings more than thirty-five (35) percent of the producers present who supply the areas proposed to be consolidated do not object to such consolidation.

4271. The director shall, prior to the formulation of a stabilization and marketing plan for fluid milk for any marketing area, conduct a public hearing in said area for the purpose of determining whether or not producers whose major interest in the fluid milk business is in the production of fluid milk for the marketing area and who represent not less than 65 percent of the total number of producers whose major interest in the fluid milk business is in the production of fluid milk for the marketing area, and who produce not less than 65 percent of the total volume of the

fluid milk produced for said marketing area by all such producers, desire that a stabilization and marketing plan for fluid milk be formulated for said area; but if a petition is presented to the director by the producers whose major interest in the fluid milk business is in the production of fluid milk for the marketing area, and who represent not less than 65 percent of the total number of producers whose major interest in the fluid milk business is in the production of fluid milk for the marketing area, and who produce not less than 65 percent of the total volume of the fluid milk produced for said marketing area by all such producers, it shall not be necessary that such hearing be held.

Article 6. Mandatory Provisions

4280. Each stabilization and marketing plan shall contain provisions for prohibiting distributors and retail stores from engaging in the unfair practices hereinafter set forth:

(a) The payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by any person, whether in the form of money or otherwise.

(b) The giving of any milk, cream, dairy products, services or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream or fluid skim milk business of any customer.

(c) The extension to certain customers of special prices or services not made available to all customers who purchase fluid milk or fluid cream or fluid skim milk of like quantity under like terms and conditions.

(d) The false or misleading advertising of fluid milk or fluid cream or fluid skim milk as defined in

Sections 17500, 17501, and 17502 of the Business and Professions Code.

(c) The purchase of any fluid milk in excess of 200 gallons monthly from any producer or association of producers unless a written contract has been entered into with such producer or association of producers. Such contract shall include the following: (1) the amount of fluid milk to be purchased for any period; (2) the quantity of such milk to be paid for as Class 1. Such quantity shall be stated in pounds of milk or pounds of milk fat or gallons of milk; provided, that if the price to be paid for such Class 1 milk is established separately for the milk fat and skim milk contained in such milk, such quantity to be paid for as Class 1 shall be stated in pounds of milk or pounds of milk fat or gallons of milk or both in pounds of milk fat and pounds of skim milk separately, but in any marketing area where an equalization pool is a part of a stabilization and marketing plan, such contract need not specify the quantity of milk in any one class; (3) the price to be paid for all milk received; (4) the date and method of payment for such fluid milk, which shall be that payment shall be made for approximately one-half of the milk delivered in any calendar month not later than the first day of the next following month and the remainder not later than the fifteenth day of said month; (5) the charges for transportation if hauled by the distributor; and (6) a proviso to the effect that the producer shall not be obligated to deliver in any calendar month fluid milk to be paid for at or less than the minimum price for fluid milk that is used for Class 3, as said class is defined in Section 4228. The contract may contain such other provisions as are not in conflict with this chapter. A signed copy of such contract shall be filed by

the distributor with the director within five days from the date of its execution. The provisions of this subdivision relating to dates of payment shall not apply to contracts for the purchase of fluid milk from nonprofit cooperative associations of producers. The provisions of this subdivision do not apply to the purchase of fluid milk which is necessary to meet an unanticipated increase in demand or an unanticipated shortage in the supply of a distributor; provided, that the quantity of fluid milk so purchased from any one producer or association of producers shall not exceed 1,000 gallons in any one month; and, provided further, that a complete record of all such purchases shall be kept by the distributor and the price paid for such milk by the distributor shall not be less than the price established in the applicable stabilization and marketing plan for the usage to which such milk is applied.

(f) The purchasing, processing, bottling, transporting, delivering or otherwise handling in any marketing area of any fluid milk or fluid cream or fluid skim milk which is to be or is sold or otherwise disposed of by such distributor at any place in the geographical area within the outer, outside and external boundaries or limits of such marketing area, whether such place is a part of the marketing area or not, at less than the minimum wholesale and minimum retail prices effective in such marketing area.

(g) The payment by a distributor to any producer, including any association of producers, or the receipt by a producer, including any association of producers, from a distributor, of a lesser price for any fluid milk or fluid cream or fluid skim milk which is distributed to any person, including agencies of the federal, state or local government, located upon property within the geographical limits of any marketing area for

less than the minimum prices established by the director to be paid by distributors to producers for fluid milk, or the milk fat and skim milk contained therein, or fluid cream or fluid skim milk for said marketing area. The provisions of this section with respect to fluid milk shall apply whether or not such fluid milk is received by the distributor as whole milk, or as skim milk and fluid cream, or either, or as any other derivatives of such fluid milk which are reconstituted into such fluid milk, or fluid cream or fluid skim milk for market usage, and whether or not a fluid cream plan has been established for the marketing area.

4280.1. Each such plan shall contain provisions for prohibiting producers and distributors from engaging in the unfair practices hereinafter set forth:

(a) The payment or gift or the offer or promise of any payment or gift of money or other thing of value, directly or indirectly or through any agent or other intermediary, to any person with the purpose or design of inducing such person to become a wholesale customer of any distributor.

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4283. Each such plan shall contain provisions whereby the director shall provide methods for the establishment of minimum prices for fluid milk, fluid cream, or the milk fat or fluid skim milk components of such fluid milk or fluid skim milk, received within a marketing area regardless of whether such fluid milk, fluid cream, or the milk fat or fluid skim milk components of such fluid milk or fluid skim milk, is subsequently sold or distributed within or without such marketing area within the jurisdiction of the State of California, and may contain such provisions whether or not such fluid milk, fluid cream, or the milk

fat or fluid skim milk components of such fluid milk or fluid skim milk is subsequently sold or distributed without the jurisdiction of the State of California. Such stabilization and marketing plans shall provide for the establishment of prices for fluid milk, fluid cream, or the milk fat or fluid skim milk components of such fluid milk or fluid skim milk, whether or not such fluid milk, fluid cream, or the milk fat or fluid skim milk components of such fluid milk or fluid skim milk, is subsequently sold or distributed in another marketing area within the State of California where a stabilization and marketing plan is in effect. The stabilization and marketing plan shall provide that producers shall be paid not less than the minimum prices established for the marketing area wherein such fluid milk, fluid cream, or the milk fat or fluid skim milk components of such fluid milk or fluid skim milk, is ultimately sold or distributed, and shall further provide that in the event such fluid milk, fluid cream, or the milk fat or fluid skim milk components of such fluid milk, fluid skim milk, is subsequently sold or distributed in any place within the jurisdiction of the State of California where no stabilization and marketing plan is in effect, then such fluid milk, fluid cream, or the milk fat or fluid skim milk components of such fluid milk or fluid skim milk, shall be paid by the distributor to the producer thereof at not less than the average of prices paid by distributors, whose plants are located within such area, to producers for fluid milk, fluid cream, or the milk fat or fluid skim milk components of such fluid milk, but in the event no plants are located within said area, then the price which shall be paid by the distributor to the producer thereof shall not be less than the average of prices paid by distributors to producers for fluid milk, fluid

cream, or fluid skim milk, or the milk fat or fluid skim milk components of such fluid milk, at the plants in the nearest marketing areas adjacent to the area where such fluid milk, fluid cream, or the milk fat or fluid skim milk components of such fluid milk or fluid skim milk, is sold or distributed as established by the Stabilization and marketing plans in effect in such adjacent marketing areas.

Article 10. Minimum Wholesale and Retail Prices

4350. Pursuant to the declaration and statements of facts, policy and purposes set forth in this chapter, the director is hereby vested with the additional administrative duty and authority to prescribe and enforce minimum wholesale and minimum retail prices for fluid milk, or fluid cream, or both, as hereinafter set forth, and to enforce the provisions of this article.

4351. In all marketing areas wherein a stabilization and marketing plan for fluid milk is in effect or is hereafter established under the provisions of this chapter, the director shall designate and prescribe, or provide methods for designating and prescribing, minimum wholesale and minimum retail prices for fluid milk, including pasteurized concentrated milk, and low fat milk pursuant to the provisions of this article. In all marketing areas wherein the director has, under a stabilization and marketing plan for fluid milk, prescribed minimum prices to be paid by the distributors for fluid cream, or fluid skim milk, or either or both, the director may designate and prescribe, or provide methods for designating and prescribing minimum wholesale and minimum retail prices for fluid cream, or fluid skim milk, or either or both, pursuant to the provisions of this article. The term "fluid milk" as used in this chapter shall, unless

the context otherwise requires or indicates, mean and include (1) the term "fluid skim milk" in the application of this chapter to any marketing area in which the director has exercised his discretion to designate and prescribe, or provide methods for designating the prescribing, minimum wholesale and minimum retail prices for fluid skim milk, and (2) the term "low fat milk."

4352. Minimum wholesale prices, as used herein, shall mean prices at which fluid milk or fluid cream, or both, shall be sold by distributors to retail stores including the prices at which fluid milk or fluid cream shall be sold by distributors to retail stores, restaurants, confectioneries and other places for consumption on the premises but excluding, however, the prices at which fluid milk or fluid cream, or both, shall be sold by distributors to retail stores owned or operated by such distributor. Minimum wholesale prices, as used herein, includes prices at which fluid milk or fluid cream, or both, shall be sold by distributors to other distributors, other than in bulk, which prices may vary from the minimum prices established for sales by distributors to other wholesale customers and which prices shall be known as "subdistributor prices." A subdistributor price shall be established for each marketing area and when fluid milk or fluid cream, or both, is purchased, other than in bulk, by one distributor from another distributor for sale in a marketing area other than the marketing area where purchased the price paid shall not be less than the minimum subdistributor price for the marketing area in which the fluid milk or fluid cream, or both, is ultimately sold.

4353. Minimum retail prices, as used herein, shall mean minimum prices at which fluid milk or fluid

cream, or both, shall be sold by distributors and retail stores to consumers.

4355. In determining minimum wholesale and minimum retail prices for fluid milk or fluid cream, or both, for any marketing area, the director shall take into consideration the following economic factors operative in such marketing area in addition to other matters required by this chapter to be taken into consideration by him:

(a) The quantities of fluid milk or fluid cream, or both, distributed in such marketing area.

(b) The quantities of fluid milk or fluid cream, or both, normally required by consumers in such marketing area.

(c) The estimated purchasing power of consumers in such marketing area.

(d) The cost of fluid milk or fluid cream, or both, in such marketing area to distributors and retail stores, which in all cases shall be, respectively, the prices paid by distributors to producers and the minimum wholesale prices, as established pursuant to this chapter.

(e) The reasonably necessary cost of handling fluid milk or fluid cream, or both, incurred by distributors, including all costs of hauling, processing, selling and delivering and reasonable return on necessary capital investment, for each of the several methods of distribution used in such marketing area in accomplishing such hauling, processing, selling and delivery, excluding costs which are not reasonably necessary to efficient operation, as such costs are determined by impartial cost surveys, or examination of the books and records, or both, of all, or such portion of the distributors in such marketing area as are reasonably

determined by the director to be sufficiently representative to indicate the reasonably necessary costs of sufficient efficient distribution for such marketing area.

(f) The estimated amount of the available capacity for processing and distributing fluid milk or fluid cream, or both, of distributors in such marketing area and the estimated extent to which such available capacity is being used by such distributors.

(g) The reasonably necessary cost of handling fluid milk or fluid cream, or both, incurred by retail stores, as such costs are determined by impartial cost surveys, or examination of the books and records, or both, of such portion of the retail stores in such marketing areas as are reasonably determined by the director to be sufficiently representative to indicate such costs of all retail stores in such marketing area. In determining such costs incurred by retail stores handling commodities in addition to fluid milk or fluid cream, or both, the director shall determine the cost of doing business for each such representative retail store and for such purpose shall consider all costs and expenses of doing business including depreciation on inventory and equipment. In the absence of satisfactory evidence to the contrary, the cost of handling such fluid milk or fluid cream, or both, shall be presumed to be the same percentage as the cost of doing business of such retail store in conducting its entire business.

4355.5. In determining minimum wholesale and minimum retail prices for any marketing area, the prices paid by distributors to producers as established pursuant to this chapter shall also be considered as the cost of fluid milk, fluid skim milk, or fluid cream to any association of producers, or other cooperative

association, incorporated or unincorporated, engaged in the distributions of fluid milk, fluid skim milk, or fluid cream.

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4360. Following such hearings, investigation, surveys or examinations authorized above, the director shall establish minimum wholesale and minimum retail prices for such marketing area for distributors therein, and minimum retail prices for retail stores therein, which minimum wholesale and minimum retail prices shall be sufficient, but not more than reasonably sufficient, to cover costs, as such costs are described in Section 4355 of this code, according to method of distribution, and reasonable return upon necessary capital investment, and shown to the director by the facts available to the director from the hearings, investigation, surveys or examinations for such marketing area required in this chapter, and the director shall declare such prices effective in the same manner as that prescribed in this chapter for declaring producer prices effective; provided, however, that whenever the director shall determine from credible evidence that any prices established as hereinabove set forth will not or would not conform to and effectuate the legislative declarations, purposes and intent set forth in this chapter, then he shall instead establish minimum wholesale or minimum retail prices which are higher or lower than those sufficient to cover said costs and reasonable return on capital investment, upon the condition that he shall determine in his judgment and shall find in writing with respect to such higher or lower minimum prices:

(a) That such minimum prices will tend to maintain in the business of distributing fluid milk and fluid

cream, or both, such reasonably efficient retail stores and distributors of fluid milk and fluid cream, or both, in such marketing area as the director finds necessary to insure to consumers in such marketing area sufficient distribution facilities to supply the quantity of fluid milk or fluid cream, or both, required by such consumers without requiring such consumers to pay more for their supplies of such fluid milk, or fluid cream, or both, than is necessary to maintain adequate and efficient distribution facilities in such marketing area.

(b) That such minimum prices will not tend to induce or authorize the development of unfair trade practices, unfair competition, conditions of monopoly or combinations in restraint of trade, and that such minimum prices will tend to encourage the orderly and efficient marketing of fluid milk or fluid cream, or both.

4361. No distributor shall sell to any retail store, restaurant, confectionery or other place for consumption on or off the premises, or to any consumer, and no retail store, restaurant, confectionery or other place for consumption on or off the premises, shall purchase from any distributor or sell to any consumer, any fluid milk or fluid cream, or either of them, at less than the prices as established by the director under the provisions of this article. The use or attempted use of any method, device or transaction whereby any distributor sells or offers or agrees to sell to any retail store, restaurant, confectionery or other place for consumption on or off the premises, or to any consumer, or any retail store, restaurant, confectionery or other place for consumption on or off the premises, buys or offers or agrees to buy from

any distributor, or sells or offers or agrees to sell to any consumer, fluid milk or fluid cream, or either, at a price less than that established by the director under the provisions of this article, is prohibited whether such method, device or transaction applies directly to fluid milk, fluid cream or either or applies to or is used in connection with the sale or handling of any commodity, product or article. Prohibited methods, devices or transactions shall include, but not be limited to, any one or more of the following: discounts, rebates, free services, advertising allowances, leases of refrigeration or other equipment, gifts, or payments, allowances or credits made or given for, or in connection with, the return of containers or other property, unless such payment, allowance or credit is a repayment of a deposit or charge, in excess of the price established by the director under the provisions of this article, paid by a wholesale customer, or by a consumer, for the return of such containers or other property.

A distributor, or retail store, restaurant, confectionery or other place for consumption on or off the premises shall be considered to have violated the provisions of this section if it engages in such violation directly or through an agent, employee, or subsidiary or affiliated company or corporation. For purposes of this section subsidiary or affiliated company or corporation includes, but is not limited to, companies or corporations controlled by the distributor, or retail store, restaurant, confectionery or other place for consumption on or off the premises, directly or indirectly through ownership of issued capital stock or otherwise.

* * * * *

Article 11. Distributors' Licenses, Fees and Bonds

4375. No distributor shall deal in fluid milk or fluid cream without first having obtained a license from the director. The special licenses provided in this section are in addition to any and all licenses required by any section of Division 4, Agricultural Code, or any law or ordinance of any county or municipality of this State. Applications for the licenses herein provided shall be made on forms prescribed by the director, shall be accompanied by an application fee of three dollars ($3), and shall state the name and address of the applicant and such details as to the nature of the applicant's business as the director may require. Such applicant shall further satisfy the director of his or its character, responsibility and good faith in seeking to carry on the business stated in the application. Licenses shall be issued for a period of twelve (12) months from the first day of each year or for the remainder of the calendar year from the date of issuance. Application for renewal of a license for the following year by a licensee, together with the application fee of three dollars ($3), shall be made prior to the expiration date of the license held, and if not so made the applicant shall pay an additional sum equal to 100 percent of the application fee before such license shall be issued.

Article 14. Penalties

4410. (a) The violation of any provision of this chapter, or of any provision of any stabilization and marketing plan or any order of the director establishing minimum wholesale and minimum retail prices for fluid milk or fluid cream formulated under the provi-

sions of this chapter, or of any of the unfair practices set forth in this chapter, or of any rule or regulation duly adopted and promulgated by the director under Section 4361.5, is a misdemeanor, and is furthermore ground for revocation or suspension of license in the manner set forth in this chapter. The unfair practice provisions described in this chapter are hereby declared to apply to all distributors, whether or not a plan is in effect in the area in which a distributor is licensed or carries on business.

(b) Every distributor must pay for fluid milk or fluid cream delivered to him or it at the time and in the manner specified in the contract with the producer; failure to make such payment is hereby declared to be a violation of this chapter, and ground for refusal, suspension or revocation of license in the manner set forth in this chapter.

(c) Any person who violates any provision of this chapter or of a stabilization and marketing plan or any order of the director establishing minimum wholesale and minimum retail prices for fluid milk or fluid cream or any rule or regulation duly adopted and promulgated by the director under Section 4240 shall be liable civilly in the sum of five hundred dollars ($500) for each and every violation, such sum to be recovered by the director in any court of competent jurisdiction. All sums recovered under this section shall be deposited in the State Treasury to the credit of the Department of Agriculture Fund.

Article 15. Disciplinary Proceedings

4415. The director may refuse to grant any license herein provided and may revoke or suspend any such license as the case may require when he is satisfied

that any applicant or licensee has violated any provision of this chapter, or any provision of any stabilization and marketing plan formulated under the provisions of this chapter, or of any order of the director establishing minimum wholesale and minimum retail prices for fluid milk or fluid cream formulated under the provisions of this chapter, or any rule or regulation duly adopted and promulgated by the director under Section 4240. The proceedings shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

The decision may include an order refusing, revoking or suspending the license applied for or held by the respondent, or affixing such other conditional and probationary orders as may be proper for the enforcement of this chapter or any provision of any stabilization and marketing plan formulated under the provisions of this chapter, or of any order of the director establishing minimum wholesale and minimum retail prices for fluid milk or fluid cream formulated under the provisions of this chapter, or of any rule or regulation duly adopted and promulgated by the director under Section 4240.

After any decision including any conditional or probationary orders, should respondent fail, refuse or neglect to comply with any such orders, the director may suspend or revoke the license in accordance with the procedure provided in this section.

Previous violation by any applicant, or by any person connected with said applicant, of any provision of this chapter, or of any provision of any stabilization and marketing plan formulated under the provisions of this chapter, or of any order of the director

establishing minimum wholesale and minimum retail prices for fluid milk or fluid cream, formulated under the provisions of this chapter, or any rule or regulation duly adopted and promulgated by the director under Section 4240, shall be good and sufficient ground for denial, revocation or suspension of a license.

4416. Whenever the director is satisfied, either by investigation or after hearing, that a distributor is unable to pay for fluid milk and/or fluid cream purchased from producers and is further satisfied that to permit the distributor to continue to purchase and receive fluid milk and/or fluid cream from producers would be likely to cause serious and irreparable loss to producer-creditors and other producers, then the director within his discretion may thereupon and forthwith shorten the time for hearing that is provided for in Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and thereupon may issue an order to show cause why the license of said distributor should not be forthwith suspended or revoked; provided, however, that the time of notice of said hearing shall in no event be less than five days. At such hearing the distributor proceeded against shall be ordered to show cause why his or its license should not be suspended or revoked or continued under such conditions and provisions, if any, as the director may consider just and proper and for the protection of the best interests of the producer-creditors and producers from whom the distributor has been and is receiving fluid milk and or fluid cream. Following such hearing, the decision of the director shall become effective at his discretion.

Said hearing, in the case of such emergency, may be called upon written notice, said notice to be served

personally or by mail on the distributor involved and may be held at the nearest office of the director or at such place as may be most convenient in the discretion of the director for the attendance of all parties involved.

Article 16. Construction and Interpretation

4420. (a) The Legislature hereby declares that Chapter 17 of Division 6 of this code is intended to formulate a comprehensive scheme for the regulation of marketing and distribution of fluid milk and fluid cream. If, however, any provision of, or addition or amendment to, said Chapter 17 of Division 6 of this code, either as originally enacted in 1935 at the Fifty-first Regular Session of the California Legislature, or as amended or added to or recodified or re-enacted at any subsequent session of the California Legislature, should be held to be unconstitutional, the unconstitutionality of such provision shall not affect any other provision of said chapter.

(b) If any article, section, subsection, sentence, clause or phrase of any provision of Chapter 17 of Division 6 of this code is for any reason held to be unconstitutional; such decision shall not affect the validity of the remaining provisions of said chapter. The Legislature hereby declares that it would have enacted each article, section, subsection, sentence, clause or phrase of said chapter irrespective of the fact that one or more other articles, sections, subsections, sentences, clauses or phrases be declared unconstitutional."

B. The California statutes granting state consent to the federal purchase of land for military purposes are:

Section 34, Political Code, enacted 1872:

"The legislature consents to the purchase or condemnation by the United States of any tract of land within this State for the purpose of erecting forts, magazines, arsenals, dockyards, and other needful buildings, upon the express condition that all civil process issued from the Courts of this State, and such criminal process as may issue under the authority of this State, against any person charged with crime, may be served and executed thereon in the same mode and manner and by the same officers as if the purchase or condemnation had not been made."

Section 34, Political Code, as amended by Statutes of 1939, Chapter 710, page 2231:

"The Legislature consents to the purchase or condemnation by the United States of any tract of land within this State for the purpose of erecting forts, magazines, arsenals, dockyards, and other needful buildings, upon the express condition that all civil process issued from the courts of this State, and such criminal process as may issue under the authority of this State, against any person charged with crime, may be served and executed thereon in the same mode and manner and by the same officers as if the purchase or condemnation had not been made and upon the further express condition that the State reserves its entire power of taxation with respect to such tracts of land and may levy and collect all taxes now or hereafter imposed in the same manner and to the same extent as if this consent had not been granted.

The authority to serve civil and criminal process and power to tax hereinabove reserved to the State in

the case of the purchase or condemnation by the United States of any tract of land within this State shall, any law to the contrary notwithstanding, also be reserved to the State with respect to any tract or land over which any jurisdiction is ceded or granted by the State to the United States under any law of this State now in effect or which may hereafter be adopted, the authority and power herein reserved by the State to be exercised in the same manner and to the same extent as if such jurisdiction had not been ceded or granted by the State to the United States."

Government Code, Section 111, Statutes 1943, Chapter 134, page 898:

"The Legislature consents to the purchase or condemnation by the United States of any tract of land within the State for the purpose of erecting forts, magazines, arsenals, dockyards, and other needful buildings, reserving the authority to serve and execute process and the State's entire power of taxation as provided in this article."

Government Code, Section 126, Statutes First Extra Session 1946, Chapter 154, page 199:

"Notwithstanding any other provision of law, general or special, the Legislature of California consents to the acquisition by the United States of land within this State upon and subject to each and all of the following express conditions and reservations, in addition to any other conditions or reservations prescribed by law:

(a) The acquisition must be for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, or other public purpose within the pur-

view of Clause 17 of Section 8 of Article I of the Constitution of the United States;

(b) The acquisition must be pursuant to and in compliance with the laws of the United States;

(c) The United States must have acquired title to the land and must in writing have assented to acceptance of jurisdiction over the land upon and subject to each and all of the conditions and reservations in this section prescribed;

(d) The conditions prescribed in subdivisions (a), (b), and (c) of this section must have been found and declared to have occurred and to exist, by the State Board of Equalization, and the board must have found and declared that such acquisition is in the interest of the State, certified copies of its orders or resolutions making such findings and declarations to be filed in the office of the Secretary of State and recorded in the office of the county recorder of each county in which any part of the land is situate;

(e) In granting this consent, the Legislature and the State reserve jurisdiction on and over the land for the execution of civil process and criminal process in all cases, and the State's entire power of taxation including that of each State agency, county, city, city and county, political subdivision or public district of or in the State; and reserves to all persons residing on such land all civil and poltical rights, including the right of suffrage, which they might have were this consent not given.

(f) This consent continues only so long as the land continues to belong to the United States and is held by it in accordance and in compliance with each and all of the conditions and reservations in this section prescribed.

The finding and declaration of the State Board of Equalization provided for in subdivision (d) of this section shall be made only after a public hearing. Notice of such hearing shall be published once in a newspaper of general circulation in each county in which the land or any part thereof is situated and a copy of such notice shall be personally served upon the clerk of the board of supervisors of each such county. The State Board of Equalization shall make rules and regulations governing the conditions and procedure of such hearings, which shall provide that the cost of publication and service of notice shall be borne by the owner or transferee of the property.

The provisions of this section do not apply to any land or water areas heretofore or hereafter acquired by the United States for migratory bird reservations in accordance with the provisions of Sections 375 to 380, inclusive, of the Fish and Game Code."

Government Code; Section 126 Statutes 1961, Chapter 966, page 2606:

"Notwithstanding any other provision of law, general or special, the Legislature of California consents to the acquisition by the United States of land within this State upon and subject to each and all of the following express conditions and reservations, in addition to any other conditions or reservations prescribed by law:

(a) The acquisition must be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, or other public purpose within the purview of clause 17 of Section 8 of Article I of the Constitution of the United States, or for the establishment, consolidation and extension of national forests under the provisions of the act of Congress approved

March 1, 1911, (36 Stat. 961) known as the "Weeks Act";

(b) The acquisition must be pursuant to and in compliance with the laws of the United States;

(c) The United States must in writing have requested state consent to acquire such land and subject to each and all of the conditions and reservations in this section and in Section 4 of Article XIV of the Constitution prescribed;

(d) The conditions and reservations prescribed in subdivisions (a), (b), (c), (e), and (h) of this section must have been found and declared to have occurred and to exist, by the State Lands Commission, and the commission must have found and declared that such acquisition is in the interest of the State, certified copies of its orders or resolutions making such findings and declarations to be filed in the Office of the Secretary of State and recorded in the office of the county recorder of each county in which any part of the land is situate;

(e) In granting this consent, the Legislature and the State grant concurrent jurisdiction on and over the land to the United States, excepting and reserving state jurisdiction on and over the land for the execution of civil and criminal process and to enforce the laws of the State of California in all cases, and the State's entire power of taxation including that of each state agency, county, city, city and county, political subdivision or public district of or in the State; and reserve to all persons residing on such land all civil and political rights, including the right of suffrage, which they might have were this consent not given.

(f) This consent continues only so long as the land continues to belong to the United States and is held by it in accordance and in compliance with each and all of the conditions and reservations in this section prescribed.

(g) Acquisition as used in this section means: (1) lands acquired in fee by purchase or condemnation, (2) lands owned by the United States that are included in the military reservation by presidential proclamation or act of Congress, and (3) leaseholds acquired by the United States over private lands or state-owned lands."

(h) In granting this consent, the Legislature and the State reserve jurisdiction over the land, water and use of water with full power to control and regulate the acquisition, use, control and distribution of water with respect to the land acquired.

(i) In granting this consent, the Legislature and the State except and reserve to the State all deposits of minerals, including oil and gas, in the land, and to the State, or persons authorized by the State, the right to prospect for, mine, and remove such deposits from the land.

The finding and declaration of the State Lands Commission provided for in subdivision (d) of this section shall be made only after a public hearing. Notice of such hearing shall be published pursuant to Section 6061 in each county in which the land or any part thereof is situated and a copy of such notice shall be personally served upon the clerk of the board of supervisors of each such county. The State Lands Commission shall make rules and regulations governing the conditions and procedure of such hearings, which shall provide that the cost of publication and service of notice and all other expenses incurred by the commission shall be borne by the United States.

The provisions of this section do not apply to any land or water areas heretofore or hereafter acquired by the United States for migratory bird reservations in accordance with the provisions of Sections 10680 to 10685, inclusive, of the Fish and Game Code.

SEC. 2. This act is an urgency measure necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

The extent to which jurisdiction of the State of California applies within federal lands in this State is a matter of the utmost importance in numerous transactions every day. It is imperative that this bill, which, in effect, requires that the will of the people of this State prevail in all territory within the boundaries of this State, to the extent not inconsistent with federal duties, go into effect as early as possible. Thereby, those laws which the people, through their representatives, have enacted for the public peace, health, and safety will have greater applicability."

C. The California statutes tendering cession of jurisdiction to the United States over land conveyed or ceded to the government for military purposes are:

Statutes of 1897, Chapter 56, page 51:

"SECTION 1. The State of California hereby cedes to the United States of America exclusive jurisdiction over all lands within this State now held, occupied, or reserved by the Government of the United States for military purposes or defense, or which may hereafter be ceded or conveyed to said United States for such purposes; *provided,* that a sufficient description by metes and bounds and a map or plat of such lands be filed in the proper office of record in the county in

which the same are situated; *and provided further,* that this State reserves the right to serve and execute on said lands all civil process, not incompatible with this cession, and such criminal process as may lawfully issue under the authority of this State against any person or persons charged with crimes committed without said lands.

SEC. 2. This Act shall take effect immediately."

Government Code, Section 114, Statutes of 1943, Chapter 134, page 898:

"The State cedes to the United States exclusive jurisdiction over all lands within the State held, occupied, or reserved on March 2, 1897 by the United States for military purposes or defense, and over all land which thereafter has been or which may be ceded or conveyed to the United States for such purposes reserving the authority to serve and execute process, and the State's entire power of taxation. A sufficient description by metes and bounds and a map or plat of the lands shall first be filed in the proper office of record in the county in which the lands are situated."

D. The California statutes reserving state criminal jurisdiction over officers committed on lands whose jurisdiction is ceded to the United States are:

Statutes of 1891, Chapter 181, page 262:

"SECTION 1. The State of California hereby cedes to the United States of America exclusive jurisdiction over such piece or parcel of land as may have been or may be hereafter ceded or conveyed to the United States, during the time the United States shall be or remain the owner thereof, for all purposes except the administration of the criminal laws of this State and the service of civil process therein.

SEC. 2. This Act shall take effect immediately."

Government Code, Section 113, Statutes 1943, Chapter 134, page 898:

"The State cedes to the United States exclusive jurisdiction over such land as has been or may be ceded or conveyed to the United States, during the time the United States is the owner thereof, reserving the administration of the criminal law of the State, the authority to serve and execute process and the State's entire power of taxation."

Government Code, Section 113, as amended Statutes of 1947, Chapter 1532, page 3164:

"SEC. 2. Section 113 of said code is amended to read:

113. The State reserves the administration of the criminal law of the State with respect to any land over which any jurisdiction has been or may be ceded or conveyed to the United States, during the time the United States is the owner thereof."

Office of Naval Res. U.S.
BTL R.D

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 373

CHARLES PAUL, Director of Agriculture of the State of California and STANLEY MOSK, Attorney General, State of California, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

These two consolidated actions were instituted by the United States in the United States District Court for the Northern District of California to restrain petitioners, the Director of Agriculture and the Attorney General of the State of California, from enforcing California's minimum milk price regulations with respect to milk purchased by distributors from producers (*i.e.*, dairy farmers) and then sold by the distributors in fluid form or as milk products to the

United States for mess hall consumption or resale at base commissaries at three federal military installations located within the territorial limits of California. The purchases by the United States from the distributors were made under contracts entered into by Army and Air Force procurement officers following competitive bidding, as required by armed service procurement regulations and procedures promulgated under 10 U.S.C. 2301, *et seq.* The case was heard by a three-judge court because the complaints raised questions concerning the constitutionality of the California Milk Stabilization Act as applied to the sales from the producers to the distributors and the subsequent resales to the United States.

On November 29, 1960, the district court held that the California Milk Stabilization Act could not be applied to the sales because they were made on lands under exclusive federal control, and because the Milk Act had not been assimilated as federal law. It also held that the State price regulations were unconstitutional since they conflicted with the express federal policy of competitive bidding, and because the statute imposed penalties on the federal government if it purchased milk at less than the established minimums. On April 17, 1961, injunctive orders were entered in accordance with these determinations.

Petitioners took timely direct appeals to both this Court and the Court of Appeals for the Ninth Circuit. On January 15, 1962, this Court entered an order postponing further consideration of the question of jurisdiction on direct appeal under 28 U.S.C. 1253

until the hearing of the case on the merits.[1] *Paul* v. *United States*, 368 U.S. 965. The case was set for argument as No. 19, this Term.

Petitioners have now filed a petition for a writ of certiorari to the Ninth Circuit prior to judgment. The petition is expressly conditioned upon a determination by this Court that it has no jurisdiction over the direct appeal in No. 19. In view of its conditional nature, petitioners suggest that the petition not be acted upon until after the oral argument in No. 19.

The argument in No. 19 is immedately to precede the argument on the direct appeal taken by the United States in No. 81, *United States* v. *Georgia Public Service Commission*. In the latter case, a three-judge district court in the Northern District of Georgia held that the State of Georgia could constitutionally prohibit motor common carriers from contracting with the United States for the intrastate transportation of household goods and personal effects of military and civilian personnel of the United States at rates other than those prescribed by the Georgia Pub-

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[1] As this Court has been advised, since the determination of the district court was made the United States has concluded, as a matter of procurement policy, not to assert immunity from the established California minimum producer prices with respect to milk sold to distributors for processing and ultimate resale to the United States. See Memorandum for the United States in response to Jurisdictional Statement in *Paul* v. *United States* (October Term 1961, No. 239), p. 5. Thus, this Court is called upon to determine only whether California may regulate the price at which distributors may sell milk to the military installations involved.

lic Service Commission. On May 21, 1962, this Court postponed the question of jurisdiction in an order similar to that which it had previously entered in the present case. 369 U.S. 882.

The issue of California's entitlement to enforce its minimum distributor prices on the sales here involved is of substantial importance. We believe, for reasons to be stated in our brief that this Court has jurisdiction of the appeal. In any event the issues will have been thoroughly briefed and argued on both sides and, in our view, should be expeditiously resolved irrespective of this Court's disposition of the jurisdictional question in this case and the Georgia case. For this reason, we do not oppose the granting of the petition for certiorari, in the event that this Court should conclude that it has no jurisdiction under 28 U.S.C. 1253 over the direct appeal taken by petitioners.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

SEPTEMBER 1962